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United States  
Circuit Court of Appeals  
For the Fifth Circuit.

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SAM KLEINMAN,

Appellant,

vs.

PAUL W. SAMPSELL, Trustee in Bankruptcy, of the estate  
of Abraham Zemansky, David Zemansky and Sol Zemansky,  
doing business under the fictitious names and styles of Prov-  
ident Loan Association and State Loan Office, Bankrupts,  
Appellee.

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Transcript of Record  
In Two Volumes  
VOLUME II  
Pages 393 to 586

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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

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No. 10236

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Circuit Court of Appeals  
For the Ninth Circuit.

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Central Division





SAM KLEINMAN,

called as a witness on behalf of the Trustee, having been first duly sworn, testified as follows:

The Referee: Be seated, please. What is your name?

The Witness: Sam Kleinman. [442]

Direct Examination

By Mr. Chotiner:

Q. Mr. Kleinman, you are the one who has filed a claim in the Zemansky Brothers' estate in bankruptcy, is that correct? A. Yes.

Q. Now, directing your attention to the time when you first discussed the subject of obtaining security from the Zemanskys, can you tell us when that was?

A. Oh, it was around in January.

Q. Of 1939? A. 1939, yes.

Q. Had you discussed the matter of getting security from the Zemanskys in the last part of 1938?

A. No sir.

Q. Now, where was it that you first asked the Zemanskys for security in January?

A. Well, I was down at San Francisco——

Q. I am sorry. I wonder if you can keep your hand away from your mouth so we can hear you, please.

A. All right. I left the Zemanskys' employment in 1938, the last week in December, I left the Zemanskys' employment. I told them I am going to

(Testimony of Sam Kleinman.)

leave the last of January, told them I was going to leave in January, 1940, but I left a week before.

Q. When you say January, 1940, do you mean January, [443] 1939?

A. January, 1939, yes.

Q. Who did you tell that to?

A. To Sol Zemansky.

Q. When you told that to him, did you say anything at all about getting security?

A. No.

Q. When was the first time then that you really discussed the question of getting security; was that in January?      A. In January.

Q. Where did that conversation take place?

A. In my office.

Q. Was that at the Provident Loan Association?

A. The Provident Loan Association.

Q. With whom did you have the conversation?

A. Sol Zemansky.

Q. Tell us what you told him and what he said, if anything?

A. Well, I was gone to San Francisco for the New Year with my daughter, and I came up to see my son-in-law, Mr. Dienstag, and I told him I left the Zemanskys, was no more employed with them.

Q. You told that to your son-in-law, Mr. Dienstag, is that right?      A. Yes sir. [444]

(Testimony of Sam Kleinman.)

Q. Now, when you got back to San Francisco, I mean, to Los Angeles, you had a conversation with Sol Zemansky in your office, is that right?

A. Yes sir.

Q. What did you tell Mr. Zemansky about your getting security?

A. Well, I came in there and I had my personal papers in the office in my desk. I was around there. Sol came in. He said "Sam, how are you feeling, how are you feeling?" I said "I am feeling a little better and I am getting rested up." He said "Well, everything is O.K. You are feeling better." I said "Yes." A couple of days later, or maybe it was, I don't remember whether it was two days or three days later he came in my office and talked about different things, and I said to him "Sol, I am no more employed by you and how would you like to give me—you know, I left you; how would you like to give me security for my money?" Sol says, "Why, Sam, anything I can do for you I will be glad to do it for you, give you security if you want it; of course, I don't like to have you leave me, but if you want security I will be glad to give it to you."

Q. Now, when you had that conversation with Mr. Zemansky, had you already left the employ of the Provident Loan Association?

A. Yes sir. [445]

(Testimony of Sam Kleinman.)

Q. When you first started to work at the Provident Loan, did you get \$75 a week salary?

A. Yes sir.

Q. And was that later reduced to \$50 a week?

A. I reduced that salary myself.

Q. When was it that you reduced the salary to \$50 a week?

A. I reduced that salary to \$50 a week when Mr. Sol Zemansky asked me to do him a favor and to stay with him because he would be busy going up the coast and he didn't like to see me leave him, if I only can give him a little time and be around there he will appreciate it if I stayed there.

Q. When was that; was that in 1938?

A. No, that was when I left him in 1939.

Q. Then you came back to work for him in 1939, is that right?

A. Yes sir.

Q. That was when you volunteered to take a reduction of salary to \$50 a week?

A. I volunteered, I told him, I said, "Mr. Zemansky, I can't stay around here; I got to be away; my health is not in good shape, and I want to take my time, I want to come in as often as I want and any time that I want to, but it would not be fair to draw the same salary."

Q. Did you tell Mr. Zemansky that the business could [446] not afford to pay you \$75 a week?

A. No sir, Mr. Zemansky told me, "Sam, let's not talk about salary; you can come in and draw



(Testimony of Sam Kleinman.)

the same salary if you want to;" but I said that wasn't fair.

Q. In other words, he told you you could draw the same salary as before, even though you didn't do as much work there, is that it?

A. Yes sir.

Q. When was the next time, Mr. Kleinman, that you discussed the question of getting security with Mr. Sol Zemansky? A. The next time?

Q. Yes.

A. I never discussed it with him again after that time. My son-in-law talked to him.

Q. Then you only discussed the subject once with Mr. Sol Zemansky before Mr. Dienstag started to talk to him about it, is that right?

A. I don't understand the question.

Q. You only discussed the subject with Mr. Sol Zemansky on one occasion, then from then on Mr. Dienstag was the one who carried on the negotiations with him, is that right?

A. Yes, that is right.

Q. You didn't ask Mr. Zemansky on several occasions for security? [447] A. No.

Q. Didn't Mr. Sol Zemansky tell you the first time you asked him for security that he would have to take it up with his brothers? A. Never.

(A short interruption on another matter).

(Testimony of Sam Kleinman.)

Q. Did Sol Zemansky ever tell you at any time that he would have to take up the matter of his giving you security with his brothers?

A. Never.

Q. Now, Mr. Dienstag then came down to Los Angeles from San Francisco at your request, is that right? A. At my request, no.

Q. Who asked Mr. Dienstag to come to Los Angeles to talk to Sol Zemansky about security?

A. Well, I will explain. When I came there at first for the New Year, to San Francisco in 1939, I came in his office; I came in his office and Mr. Dienstag says to me—he didn't know I was going to come, he didn't know, so he said "Hello."

Q. Was this conversation between yourself and Mr. Dienstag? A. Yes.

Q. Well, now, after you came back from San Francisco on New Year's Day, after your visit at New Year's with [448] Mr. Dienstag, you talked to Sol Zemansky about getting security, didn't you?

A. After I came back from San Francisco?

Q. Yes. A. Yes, I did.

Q. Did you talk to Mr. Zemansky before you went to San Francisco for the New Year's Holiday about getting security? A. No.

Q. Then after you talked to Sol Zemansky after New Year's, your son-in-law came down to Los Angeles and talked to Mr. Zemansky about security, is that right? A. Yes sir.

(Testimony of Sam Kleinman.)

Q. Did you ask him to come to Los Angeles?

A. No sir.

Q. Did you hear from Mr. Dienstag that he was coming down on his own accord?

A. Well, I talked to him; I told Mr. Dienstag, he asked me, why did you leave the Zemanskys.

Q. Pardon me. You are going back to the conversation with Mr. Dienstag on New Year's?

A. Yes.

Q. Can you tell us who it was, if anyone, who asked Mr. Dienstag to come to Los Angeles after you had your conversation with Mr. Zemansky?

A. Mr. Dienstag told me himself, if I thought every- [449] thing is all right. I was once more in San Francisco, I was once more in San Francisco.

Q. That was after you had talked to Sol Zemansky?

A. Yes, yes.

Q. It was then that you told Mr. Dienstag about your conversation with Mr. Zemansky, is that right?

A. Yes.

Q. Then it was after that that Mr. Dienstag and you went back to Los Angeles, is that right?

A. No, I went alone. Mr. Dienstag came himself.

Q. Then Mr. Dienstag came to Los Angeles by himself, is that right?

A. Yes sir.

Q. When he came down to Los Angeles, were you in Los Angeles or San Francisco?

A. I was in Los Angeles.

(Testimony of Sam Kleinman.)

Q. Then there was a conversation had between you and Mr. Dienstag and Mr. Sol Zemansky, is that right?

A. When Mr. Dienstag came down, after that, yes.

Q. When was that, if you can remember now?

A. I think it was the last part of—somewhere around in January.

Q. Was it towards the end of January or in the middle?

A. Well, it is awfully hard to tell just when, but it was around January.

Q. By the way, Mr. Dienstag is your son-in-law, is [450] that right?      A. Yes sir.

Q. So that our record may be clear, Mrs. Dienstag is your daughter?      A. Yes sir.

Q. She is the wife of Mr. Dienstag?

A. Yes sir.

Q. Is that correct?      A. Yes sir.

Q. Did you employ Mr. Dienstag as your attorney?      A. No.

Q. Where did this conversation take place with Mr. Dienstag, yourself and Sol Zemansky?

A. In my office.

Q. At the Provident?      A. Yes sir.

Q. What was said about security?

A. Mr. Dienstag when he came down, he said “Sol, I suppose you understand that I understand Sam talked to you that he wanted—he is no more employed by you, and he wants his money secured and what kind of security have you to give him.”



(Testimony of Sam Kleinman.)

Q. What did Mr. Zemansky say, if anything?

A. Mr. Zemansky said to him, to Mr. Dienstag, "Well, you see, Eddie"—he called him Eddie; he said "Eddie, we are in all kinds of enterprises; we need a lot of money. [451] We have a lot of pledges in the Loan Department, a lot of them, and I would like to give him security in loans, but there is a law where a pawnbroker cannot re-loan any pledges."

Q. Is that what Mr. Zemansky said at that time?      A. Yes sir.

Q. What else was said about giving security?

A. So they had been talking about the legal points, and Mr. Zemansky said "I was the one who put that law in effect and I know what I am talking about."

Q. Did Mr. Dienstag say that he could work it out so it would be legal to give pledges for security?

A. No.

Q. Was anything like that said by Mr. Dienstag at any time?

A. I believe at that time—do you want a reference to the same time or after?

The Referee: Why don't you keep him on this one conversation?

Mr. Chotiner: Go ahead and give us the rest of the conversation that took place.

A. So Mr. Zemansky says to Mr. Dienstag, "I can show you a pawn-ticket where it has printed on the back of it where the law prescribes that

(Testimony of Sam Kleinman.)

I cannot do that." So Mr. Dienstag said, "Well, I am not acquainted with that law, never looked into it, but if you can give me the ticket [452] I will look into it." So I believe Mr. Dienstag and Sol Zemansky left the office and about late in the afternoon it seems Mr. Dienstag showed me a pink ticket, a pawn-ticket, from the State Loan Office on Main Street.

Q. Was Mr. Zemansky there at that time?

A. When that was shown to me?

Q. Yes.           A. Yes sir.

Q. Was anything else said then?

A. No, not much.

Q. When you say "not much," was anything at all said about your getting security?

A. Well, Mr. Dienstag says "I will go home; I have to be back in San Francisco, and I will look into it and see, look into that law."

Q. That was the end of that first conversation then, at which Mr. Dienstag was present and you discussed security, is that right?           A. Yes.

Q. Did you or Mr. Dienstag ask Mr. Zemansky if he had any other kind of security which he could give?

A. No, that was not discussed at all.

Q. That was not even mentioned at all in that conversation, was it?           A. No.

Q. Had you discussed with Mr. Zemansky before that [453] time about getting any other kind of security?           A. Me?

(Testimony of Sam Kleinman.)

Q. Yes.           A. No.

Q. Then your son-in-law went back to San Francisco?  
A. Yes sir.

Q. Did he come back again to Los Angeles and talk with Mr. Zemansky about security?

A. Yes, he did come back.

Q. About how long after the first conversation that he had with him was it that he came back?

A. I think—it must have been around the next month, in February.

Q. Was that the first part of February?

(A short interruption on another matter).

Mr. Chotiner: Q. Now, getting back to this first conversation when Mr. Dienstag was present and Mr. Zemansky told you that under the law he could not give you those pledges as security; is that right?

A. He didn't tell me that; but he talked to Mr. Dienstag about it.

Q. He told Mr. Dienstag that, isn't that true?

A. Yes sir.

Q. And you were present?

A. Yes sir. [454]

Q. It was then that Mr. Dienstag said, "I will have to look into the law (in substance and effect) and see if I can work out some way where you can give the security."

A. No, he didn't say that; I didn't hear him say that, but he gave him the ticket and told him, "You can look into it and if it could be done I will be more than glad to do it for you."

(Testimony of Sam Kleinman.)

Q. Then the second time Mr. Dienstag came down was in the first part of February, is that right?

A. The first part of February.

Q. Or when was it, Mr. Kleinman?

A. It was in February.

Q. In February? A. Yes.

Q. Have you any way of remembering now whether it was before Lincoln's Birthday or not?

A. No.

Q. Have you any way of fixing the time when it was that that second conversation took place with Mr. Dienstag? A. I don't know.

Q. It took place at the office of the Provident?

A. Yes.

Q. Who was present?

A. Mr. Sol Zemansky, Mr. Dienstag and myself.

Q. What was said by the people who were there? A. Well,— [455]

Q. About security?

A. About the security; Mr. Dienstag talked to Mr. Zemansky; Mr. Dienstag talked to Mr. Zemansky and they were talking some legal words, legal words, a lot of words I didn't understand about that at all.

Q. Do you remember what Mr. Dienstag was saying about the legal points? A. Yes sir.

Q. What did he say?



(Testimony of Sam Kleinman.)

A. He said to him, "Sol, I think you are right, that you cannot take possession of any pawns, of any merchandise that is pawned by you, but I've got a way; I looked up the law and I have a way where we can have security on the pawn-tickets."

Q. Did Mr. Dienstag tell him what that way was?

A. Well, he talked to him on some legal points, you know, which I could not understand.

Q. Well, did you hear, or do you remember how he told Mr. Zemansky this could be worked out, what the way was that they could do it?

A. He just had a rough sketch of it and they were talking about it and Mr. Dienstag told Mr. Zemansky, "I will go back to my office and I will work it out just the way it should be done and I will come back and show it to you."

Q. Was he acting as your attorney at that time?

A. As my attorney? [456]

Q. Yes. A. Mr. Dienstag?

Q. Yes.

A. Well, I don't know. I believe he hired Mr. Wolver and Mr. Ted Horn and Mr. Miller.

Q. At that time were Mr. Wolver, Mr. Miller and Mr. Horn discussing this question of security?

A. That I don't know.

Q. At any rate, you had a lot of confidence in Mr. Dienstag's ability as a lawyer when you took those matters up with him, didn't you?

(Testimony of Sam Kleinman.)

A. Well, I don't know; I never had very much to do with lawyers.

Q. What did Mr. Zemansky say when Mr. Dienstag told him that he had a way that he could work things out? A. Mr. Zemansky?

Q. Yes, what did he say to that?

A. Well, Mr. Zemansky said to Mr. Dienstag, "Anything you do, if you think it is legal, it is all right; I will be more than satisfied."

Q. Did Mr. Zemansky say whether he agreed with Mr. Dienstag that it could be worked out that way? A. I can't understand that.

Q. Did Mr. Zemansky agree with Mr. Dienstag when Mr. Dienstag said he had a way and explained how it could be worked out? [457]

A. He asked him to work it out and "If you work it out and if it is legal, I am satisfied."

Q. That was about the end of that conversation, is that right? A. Yes.

Q. Now, was there another time that Mr. Dienstag came down to Los Angeles to see Mr. Zemansky about the giving of security, or was it the next time that it was taken up in Los Angeles?

A. That was the time when Mr. Dienstag worked the plan out and came back to Mr. Zemansky, and he had some kind of yellow sheet in his hand, and he had it all written up in the rough.

Q. When was that, Mr. Kleinman?

A. That was in February.

Q. In February. A. Yes.

(Testimony of Sam Kleinman.)

Q. Was Mr. Zemansky here in Los Angeles at that time?      A. Yes sir.

Q. And can you help fix what time in February this was? This was the third trip now.

A. There was a trip——

Q. It was the third time that he came to Los Angeles to talk it over with Mr. Zemansky?

A. Well, let's see; that was the second trip.

Q. The second trip? [458]      A. Yes sir.

Q. In other words, on the second time, Mr. Dienstag didn't go back to San Francisco then, did he, but he brought a yellow paper in?      A. No.

Q. Then, how long after the time when he had discussed the legal points with Mr. Zemansky was it that Mr. Dienstag came back to the Provident with this yellow paper?

A. That was the third time.

Q. The third time?      A. Yes.

Q. How long after the second time was it that he came back with the yellow paper?

A. It must have been a couple of weeks, a week.

Q. A week or so?      A. Yes.

Q. By that time it was getting towards the end of February, is that right?

A. Around the middle of February.

Q. Around the middle of February?

A. Yes sir.

Q. Where did the conversation take place between Mr. Zemansky and Mr. Dienstag and yourself



(Testimony of Sam Kleinman.)

when Mr. Dienstag had the yellow piece of paper; was that at the Provident?

A. At the Provident, in my office.

Q. What was said at that time? [459]

A. At that time Mr. Dienstag was talking to Mr. Zemansky and read that, talked to him, read to him, you know, about the contract, and all at once Sol Zemansky took the paper from Mr. Dienstag in his own hands and read it over; you know, he read over the points of law and everything, the way the contract should be written and Mr. Zemansky said, "Mr. Dienstag, that just looks wonderful to me, that looks fine to me."

Q. What did Mr. Dienstag say, if you know?

A. He said, "Sol, I think that is the right way to do it; that is the right kind of a contract."

Q. When was the next time that Mr. Dienstag and Mr. Zemansky and you had a conversation regarding this question of security?

A. Mr. Dienstag and Mr. Zemansky? That was about the time when Mr. Dienstag already had that contract made out, already made out.

Q. Now, the next time Mr. Dienstag appeared in regard to this question of security, the contract is already made out on white legal paper, is that right?

A. Yes.

Q. Now, you remember when the Simon attachment was placed on the business, don't you?

A. Do I remember?



(Testimony of Sam Kleinman.)

Q. Yes sir, you remember the occasion, don't you?

A. Well, I knew when I came down from San Francisco. [460] I was at that time in San Francisco.

Q. Now, in reference to the time when you heard about the attachment, was this contract on white paper already drawn up?           A. Yes sir.

Q. Were you present when the contract was signed?

A. Yes sir,—no, when I signed it, not when the others; I was there when the others signed, but I signed first.

Q. Where did you sign the contract?

A. I signed it before Mr. Dienstag left Los Angeles.

Q. When was it Mr. Dienstag left Los Angeles?

A. Well, when he had the contract all prepared and ready to sign, and everything, he came up first to me and read the contract to me, read the contract to me and explained to me everything, and then he said, "Sam, you sign here," and I signed two contracts, and then Mr. Dienstag was asking for Sol Zemansky and they told him, told Mr. Dienstag—

Q. Who told Mr. Dienstag?

A. Abe Zemansky; that Sol Zemansky was called out of town in a hurry and he would be back in a day or two. Mr. [461] Dienstag says, "I am very sorry; I worked awfully hard on that contract

(Testimony of Sam Kleinman.)

and I got to be in San Francisco." So Mr. Dienstag said, "I am going to leave tonight," and he left that very night for San Francisco.

Q. Did Mr. Abe Zemansky tell Mr. Dienstag where Mr. Sol Zemansky was?

A. He said in San Francisco or in Oakland.

Q. Did you go with Mr. Dienstag to San Francisco that time?           A. No sir.

Q. You stayed in Los Angeles, is that right?

A. Yes sir.

Q. Now, when you signed the contract, you already knew that the Zemanskys were having trouble with the Simons people, didn't you?

A. No sir.

Q. Had you ever heard of any difficulties of any kind with the Simons?           A. No sir.

Q. Didn't you know, Mr. Kleinman, that Judge Pacht had called in Mr. Sol Zemansky within a month's time prior to signing your contract and worked out an arrangement with Mr. Zemansky whereby the rate of interest was going to be cut from twelve per cent to six per cent?

A. No sir.

Q. Did Sol Zemansky tell you that he had fixed [462] everything up with the Simons people?

A. No sir.

Q. Didn't he tell you that you had nothing to worry about or that he had nothing to worry about as far as the Simons people were concerned?

A. No sir.

(Testimony of Sam Kleinman.)

Q. Was that subject discussed so far as the Gans account was concerned? A. No sir.

Q. Now, directing your attention to the time when the attachment was put on by the Simons people, for the purpose of helping you fix the time when it occurred, your attorneys and we have stipulated that that attachment was placed on February 27, 1939. Incidentally, I have verified the date, and that is the correct date. Now, fixing that as February 27, when the attachment was run, you were in San Francisco at that time; is that right?

A. When what?

Q. When the attachment was placed on the business? A. Yes, I was in San Francisco.

Q. And you received a telephone call from Mr. Sol Zemansky, is that right? A. Yes sir.

Q. And he told you "Sam, the Sheriff has placed an attachment here on account of the Simons' account," is that right? [463]

A. No sir.

Q. What did he tell you, if anything?

A. When I was in San Francisco, I was in my daughter's home, the phone rang and Mr. Dienstag answered the phone. Mr. Dienstag was right by the phone and he answered the phone and I heard Mr. Dienstag go to the phone and say "Hello" and about a minute later he said, "Hello"; I heard him say "Hello, Sol"; then Mr. Dienstag called me to the phone and he said, "Sam, Sol Zemansky wants to talk to you"; so I took the receiver and talked

(Testimony of Sam Kleinman.)

to Mr. Sol Zemansky and he said "Hello, Sam"; I said "Hello." He said "Sam, you know we need a lot of money pretty quick, we need a lot of money pretty quick," talking fast, and I said "Well, that is all right if you need a lot of money, what do you want." He said "I want you to be down here early in the morning," or I mean "I want you to come down as quick as you can by airplane; we need around about \$25,000 or \$30,000."

Q. Did Mr. Zemansky ask you to bring Mr. Dienstag with you?      A. No sir.

Q. Did Mr. Dienstag go with you to Los Angeles?

A. Well, I got through with the conversation with Mr. Zemansky and I told him I am going to take the plane tomorrow morning, I am not going to take any plane tonight.

Q. Now, Mr. Kleinman, was anything said at that time by Mr. Zemansky in that telephone conversation that there [464] was an attachment?

A. No sir.

Q. Now, the next morning you took a plane to Los Angeles?

A. The next morning, about 9:00 o'clock, I took the plane from San Francisco, from the St. Francis Hotel, where the bus leaves there to the Airport.

Q. Mr. Dienstag went with you on the airplane, did he?

A. I told Mr. Dienstag, the time when I talked to Sol Zemansky, he wants me to come down as



(Testimony of Sam Kleinman.)

quickly as possible and that I am going to take a plane tomorrow morning, and Mr. Dienstag says "Well, I have to be in Los Angeles myself; I might as well go with you."

Q. Did Mr. Dienstag tell you before the telephone call came that he was going to Los Angeles the next day?

A. He never discussed business with me.

Q. Then, when you arrived in Los Angeles, you went straight to the Provident Loan office, is that right?

A. We arrived at the Biltmore Hotel and from the Biltmore we walked right up to the Provident Loan.

Q. You saw Sol Zemansky there?

A. We came in the front room, Sol was leaning on the showcase there and we came in and he said "Hello, boys," and we walked right into my office.

Q. You also saw a Deputy Sheriff there at that time, didn't you? [465]

A. No sir.

Q. Was there a Deputy Sheriff there that day?

A. I found out after I talked to Sol Zemansky.

Q. Well, that was that same morning, isn't that right?

A. We arrived around about 12:30 at the Biltmore Hotel, and it took about five or ten minutes to walk up there.

Q. Then you went into the office of the Provident and you and Mr. Dienstag and Sol Zemansky had a conversation, didn't you?

(Testimony of Sam Kleinman.)

A. When I got up to the Provident in my office, Mr. Dienstag put his brief case away and Sol Zemansky started to tell us about owing a lot of money to Simons and they attached it, and we got to raise money quick to get the Sheriff out of here.

Q. That was when he told you the Sheriff was in there? A. Yes.

Q. What did you or Mr. Dienstag say then?

A. Well, Mr. Dienstag didn't say very much, but I did. I said "Sol, why don't you—you say you got a lot of goods on hand—why don't you go to work and pick out some goods, give me a quarter million dollars worth of merchandise and I will go out and sell it."

Q. At the time you told that to Sol Zemansky, you had been selling merchandise for Zemansky Brothers for a period of years, isn't that right?

[466]

A. Oh, yes.

Mr. Miller: Objected to as incompetent and irrelevant.

The Referee: Overruled.

A. Yes.

Mr. Chotiner: Q. When you first started selling merchandise, there was quite a lot of merchandise for you to sell down there?

A. Yes, any time they brought out the merchandise I sold it.

Q. They gave you quite a bit of merchandise to sell, isn't that right, and you received a one per cent commission on your sales, isn't that true?

(Testimony of Sam Kleinman.)

A. Yes sir.

Q. Then in 1938, the amount of merchandise that they were giving you to sell was beginning to fall off, was it?

A. No, I don't believe so.

Q. Were they giving you as much merchandise to sell in 1938 as they had given you when you first started to work up there?

A. They just simply didn't want to give it to me.

Q. What else was said at that conversation down at the Provident that you have related? That is the time when you found out about the attachment?

A. Yes. So Mr. Zemansky said to Mr. Dienstag "When do you expect to go back to San Francisco; how long do you expect to stay here?" So after Mr. Dienstag said [467] "Oh, maybe a day or two, no longer," he said to him "Will you be around off and on, around the office here?" Mr. Dienstag says "Yes." So Mr. Dienstag came up in the afternoon, and he said "I got a way of how to settle that difficulty with Mr. Simon."

Q. Who said that? A. Mr. Sol Zemansky.

Q. What did Mr. Dienstag or you say to that?

A. Mr. Dienstag said "It is O.K. with me any way you do it."

Q. Did you go over to Judge Pacht's office any time that day? A. No sir.

Q. Did you go to Judge Pacht's office that night?

(Testimony of Sam Kleinman.)

A. We went that night to Judge Pacht's office.

Q. Who asked you to go to Judge Pacht's office, if anyone?

A. Well, I think after that Mr. Sol Zemansky said to Mr. Dienstag and myself, "Let's go out and have dinner"; so Sol Zemansky asked us to go over to the Good Fellows Grotto on Main Street.

Mr. Wolver: Can we take a short recess?

The Referee: We don't usually take a recess during the morning, but out of deference to this witness, we will take a ten minutes' recess in the Zemansky case at this time. In all other cases, please remain here. There is [468] no recess in any other case.

(After recess).

Mr. Chotiner: Q. After you had dinner, the three of you went to Judge Pacht's office, is that right?

A. No sir; after we had dinner, we went up to the Provident Loan, went up to the Provident Loan and Sol Zemansky called up Judge Pacht and he said "Judge, I am coming up." That's all I heard.

Q. Then, did the three of you go to Judge Pacht's office?

A. Then Mr. Zemansky asked Mr. Dienstag, would he mind going along with him, and he asked me if I wanted to go along, too.

Q. About what time in the evening was it that Mr. Zemansky called Judge Pacht?



(Testimony of Sam Kleinman.)

A. That was after we had dinner in the Good Fellows Grotto and we went back to the Provident.

Q. Do you know whether or not Mr. Zemansky had called Judge Pacht before that time, telling him he would be coming over?

A. No sir, I didn't know that.

Q. At any rate, you don't know of any appointment that might have been made with Judge Pacht earlier that day, do you?      A. No.

Q. It was after dark when Sol Zemansky called Judge [469] Pacht, was it?      A. Yes.

Q. Then the three of you went over to Judge Pacht's office, isn't that right?      A. Yes sir.

Q. And a conversation took place with Judge Pacht about the Simons' account, is that true?

A. Well, as I remember, we came up in Judge Pacht's office, walked through a long hall, and Judge Pacht was coming from some place and he said to Mr. Sol Zemansky, "Hello, Sol" and Sol says "We are coming in right now, we are coming in."

Q. After you got in Judge Pacht's office, there was a conversation held about the Simons' account, was there?      A. Yes sir, they were talking.

Q. What were they saying?

A. Well, Sol Zemansky made some kind of a proposition to Judge Pacht about the money they owed them, and Mr. Dienstag was sitting there and Judge Pacht, Bill Simon and Mr. Lyman, and they

(Testimony of Sam Kleinman.)

were discussing the matter; they were discussing the matter, and Sol Zemansky says, made him some proposition to secure his loan.

Q. Who first mentioned the subject about giving security for the Simons' account?

A. Mr. Zemansky.

Q. And had Judge Pacht asked Mr. Zemansky to pay off [470] the money that was owing Simons before the security was mentioned?

A. No, not as I remember.

Q. Did Mr. Zemansky ask Judge Pacht to release the attachment?      A. What is that?

Q. Did Mr. Zemansky ask Judge Pacht to release the attachment?

A. Not at that minute, no.

Q. Did Mr. Zemansky talk about security with Judge Pacht before he asked him to release the attachment?

A. He talked to him and he told him, he said "How about securing your loan, about securing your loan" and then Mr. Zemansky said, "I think Mr. Dienstag will be able to explain the way they can do it more than I can"; so Mr. Dienstag talked to Judge Pacht about different laws, various different ways how it could be done; I could not understand the way they were talking about the law; I just sat there and listened, so when that was through, when they were through talking the law and the agreement and the way they should go to secure it, so the Judge called out Mr. Simon and Mr. Lyman in the

(Testimony of Sam Kleinman.)

hall and they stayed out there for quite a while, a few minutes, they [471] stayed out there for a few minutes. After the Judge came back and sat down and I sat down, the Judge said "Well, it will be all right; I will be satisfied; but I want you to tell me one thing and I want you to tell me right now, are you solvent before I go any further?" Mr. Sol Zemansky said "We are solvent one hundred per cent."

Q. You remember that very distinctly?

A. Absolutely. [472]

Q. Now, Mr. Kleinman, did you tell Mr. Zemansky that he could use some of the pledges that had been given to you for security in order to help make up the security for the Simons?

A. When.

Q. At any time?

A. That came up after, after they agreed. [473]

Q. And did Mr. Zemansky ask you if he could use some of the pledges that had been given to you?

A. That came out this way. It was about—it wasn't very long for Mr. Dienstag to leave town and Mr. Dienstag said to Mr. Zemansky, "You got to hurry up because I can't be here any longer and I did all I could for you to help you out." So Mr. Zemansky came over to me and says "Mr. Kleinman, how about using some of your pledges, to replace the exact amount of pledges for Simons, and then we will pick out other pledges for you." [475]

(Testimony of Sam Kleinman.)

Q. Did you ever go back to work for the Zeman-skys after you left their employ?

A. After I left their employ, yes, sure.

Q. When did you go back to work there?

A. I went back to work for them—it would be awfully hard for me to tell if it was two months or maybe a few days later, but I promised Sol I will go back and help him out but not to ask me any more to come back when I got through again. He said “No more than a few months.”

Q. Now, Mr. Kleinman, how long was it that you were away from their employment before you went back to work?

A. I just got through telling you. It was the last, I remember the last week in December, 1938, before I went [477] up to San Francisco for the New Year, and then it was January, I am sure about that, and it was most of February.

Q. When you went back to work, was that after the contract was signed or before the contract?

A. Which contract?

Q. The one of February 24, 1939, when you first got your security?      A. After.

Q. It was after the contract was signed?

A. Yes sir.

Q. Now, was it after the security had been given to the Simons people, or before that?

A. I believe a little before that. [478]

Q. Now, Mr. Kleinman, there were some notes that were given to you before February 24, 1939.



(Testimony of Sam Kleinman.)

I believe these notes were given to you around 1936 and they called for interest at ten per cent. Do you recall having notes that called for ten per cent interest?

A. Changed once from one note to another note.

Q. That was some time in 1936?

A. Well, the best way to tell is by the notes, the date.

Q. But, at any rate, that was before the contract was signed about the security, wasn't it?

A. The contract of what?

Q. Well, Mr. Kleinman, we will get at it this way. [481] On February 24, 1939, there was a contract about security that was signed by you and the Zemansky Brothers, dated February 24th?

A. Yes sir.

Q. Before that time, there had been a series of notes given to you where the rate of interest was changed from twelve to ten per cent, isn't that right?

A. There were, but I don't know which year. The notes will tell when it was.

Q. At least, it was a couple years before that, wasn't it, before this security contract was signed?

A. The notes will tell.

Q. Don't you remember whether it was approximately at least a couple of years before the contract of security was signed?

A. I could not absolutely tell that time because the notes will be easier to tell when I changed them.

(Testimony of Sam Kleinman.)

Q. Well, you had some notes before the contract was signed that called for ten per cent interest, didn't you?      A. Yes sir.

Q. You were paid twelve per cent interest on those notes, weren't you?

A. I am supposed to get that; I am supposed to get twelve.

Q. You are supposed to get twelve?

A. Yes sir. [482]

Q. Now, the Zemanskys agreed to pay you twelve per cent interest on the notes, even though they only said ten per cent, isn't that right?

A. No sir, no sir.

Q. What did you mean when you said you were supposed to get twelve per cent?

A. The notes call for twelve per cent.

Q. Well, there were some notes that called for ten per cent, also, weren't there?

A. No, not at that time.

The Referee: What time are you talking about?

A. Who, me?

Q. Yes; you say "not at that time"; what time are you talking about?

A. The notes I got when I first started to do business with them. They changed the notes calling for twelve per cent.

Q. They paid you twelve per cent?

A. I believe they paid me twelve per cent; I never figured it up.

(Testimony of Sam Kleinman.)

Q. And then later on there were other notes?

A. Later on they changed those notes to ten per cent.

Q. Now, the question is, after the notes were changed to ten per cent, at what rate of interest were you paid, ten per cent or twelve per cent?

A. Well, I was getting—I never figured up, your [483] Honor, but I had a lot of money with them, and at one time they gave me a check for interest for a month, which I believe was around \$500. I said “Solly, it looks to me like I am getting the same amount of interest as I was getting the last time.” He said “You got some I.O.U.’s; you are not getting any more than ten per cent.”

Q. (By Mr. Chotiner): Mr. Kleinman, before the notes were changed from twelve to ten per cent, there was a check given you every month for \$500, which was given to you as interest on \$50,000; isn’t that right?

A. I never went through my notes. I always had my notes in a safety deposit box. I never figured how much I had with them. I relied on their honesty to give me the right kind of interest. What I mean to say, I believed they would give me the right kind of interest, but when we changed the notes from twelve per cent to ten per cent, I noticed that one check, that \$500 check, and I said “Solly, it looks to me like you are keeping on giving me the same of kind of interest.” He said “You are not getting any more than ten per cent; you know

(Testimony of Sam Kleinman.)

you have given us a lot of I.O.U.'s, day by day; we still have a lot of I.O.U.'s we owe you." I said "Well, I hope you keep track of them." He said "We take care of your bookkeeping," which I never did, never took care of my bookkeeping at all. [484]

The Referee: Q. Mr. Kleinman, when you had your conversation with Mr. Sol Zemansky, in which he told you that Simons had attached, you said that you said to him "Well, give me a quarter of a million dollars worth of merchandise and I will go out and sell it for you?" A. Yes sir.

Q. Is that what you said to him?

A. Well, I said I could sell a quarter of a million dollars worth of merchandise in one month.

Q. What did he say?

A. Well, he kind of looked at me and he said, "Well, I will see you later on." I believe later on he said "There's no use trying to sell goods right now. I know if I had to sell goods now in a hurry to satisfy payments, I know how I would sell them. I would rather not sell any goods right now."

Q. Is it or is it not a fact that you borrowed some money from a bank and in turn loaned it to the Zemanskys, on which they paid you seven per cent interest? A. No sir.

Q. That is not a fact?

A. No sir, no sir.

Q. Was there any of your money that you had with the Zemanskys that you only got seven per cent on? A. Yes, your Honor.



(Testimony of Sam Kleinman.)

Q. But you had not borrowed that money from a bank? [485]           A. No sir.

Q. That was your own money?

A. My own money, your Honor.

Q. There were times when you used to take money or borrow money from the cash drawer and put in I.O.U.'s, isn't that true?

A. I will tell you what that was.

Q. Did you, first of all, did you ever do that?

A. Yes sir.

Q. Now, when you put the money back, you took the I.O.U.'s out, or they were given back to you and you destroyed them, isn't that true?

A. That money I put in there, I remember one time I put that in there.

Q. Mr. Kleinman, pardon me for interrupting.

Mr. Wolver: I submit the witness may answer.

Mr. Chotiner: I think it calls for a yes or no answer, then he may explain it further. Read the question.

(Question read.) [486]

The Referee: Answer whether you destroyed the I.O.U.'s or not.           A. No sir.

Q. (By Mr. Chotiner): When you put the money back?

Mr. Wolver: The witness has evidenced a desire to explain that last answer. I submit the witness should have the right to explain his answer.

The Referee: Go ahead, Mr. Kleinman, what do you want to say about these I.O.U.'s?

(Testimony of Sam Kleinman.)

A. If I needed a little ready cash, I used to go where Mr. Kravitz had charge of the Loan Department and I said "I need \$50," and I made out an I.O.U. and got the \$50. I believe that was only once or twice or maybe three times.

Q. (By Mr. Chotiner): When you put the money back, you would get the I.O.U.'s back, wouldn't you?

A. I never put that money back.

Mr. Chotiner: May I have Trustee's Exhibit A for identification?

Q. I now show you Trustee's Exhibit A for identification, consisting of three slips of paper; the first is dated March 29, 1939, and bears the figures "558, \$200," and then the name of Sam Kleinman.

A. I have never seen that.

Q. Wait a minute. On March 29, 1939, did you receive \$200 from Zemansky Brothers, or anyone there?

A. No sir. [487]

Q. Mr. Kleinman, did you ever receive \$200 around that time of March 29, 1939, and didn't sign an I.O.U. for it?

A. Not that I know of.

Q. Have you any explanation to offer regarding that tab, that says "200" on it and the name "Sam Kleinman" on it?

Mr. Wolver: That is objected to as calling for the conclusion of the witness and being incompetent, irrelevant and immaterial. If he knows nothing about it, how can he explain?

The Referee: Read the question, please?

(Question read.)

(Testimony of Sam Kleinman.)

The Referee: Overruled. How can you explain why that ticket is there?

Mr. Wolver: I am going to object to the Court's question, your Honor, on the ground that it is incompetent, irrelevant and immaterial, calls for the conclusion of the witness and is argumentative.

The Referee: All right. Can you explain?

The Witness: Your Honor,——

The Referee: Just a minute. Can you explain how that ticket happened to be found by the Trustee in Bankruptcy among the papers of this bankrupt company?      A. I can't.

Q. You don't know? [488]

A. No.

Mr. Wolver: May I submit, in fairness to the witness, he should be asked if he ever saw it before.

The Witness: I never saw it before, never saw it before.

The Referee: He said he didn't.

Q. (By Mr. Chotiner): Now, I will show you a tab dated July 5, 1939, \$50.      A. Yes sir.

Q. Signed Sam Kleinman.

A. That is mine.

Q. Did you ever pay back that \$50?

A. No sir.

Q. One dated July 6th, 1939, for \$50, Sam Kleinman; did you receive that \$50?      A. Yes sir.

Q. Did you ever pay back that \$50?

A. No sir.

(Testimony of Sam Kleinman.)

Mr. Chotiner: At this time, we will offer the tabs dated July 5 and July 6, 1939, as Trustee's Exhibit next in order in evidence.

The Referee: From Trustee's Exhibit A there are now being removed the tabs dated July 5, 1939, for \$50, and July 6, 1939, and Trustee's Exhibit A for identification now consists only of the tab dated March 29, 1939, and the envelope marked "1939, Sam Kleinman." The two tabs of [489] July 5 and July 6 will be received in evidence as Trustee's Exhibit 11. We had marked as Exhibit 11 the schedules which you decided you did not want to offer in evidence, the individual schedules, so we canceled that exhibit number. These are now Trustee's Exhibit 11.

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TRUSTEE'S EXHIBIT No. 11

Jul 5 - 1939—50.00

S KLEINMAN

Jul 6 - 1939—50.00

S KLEINMAN

[Endorsed]: Filed Aug. 26, 1940.



(Testimony of Sam Kleinman.)

Q. (By Mr. Chotiner): Now, Mr. Kleinman, can you tell us how much commissions were owing to you at the time the petition was filed by the Zemansky Brothers?

A. That means 1939?

Q. Any commissions that were owing to you up to the time that they filed their petition in this bankruptcy proceeding?

A. Well, my attorney just asked me to give him a rough estimate. I told him I hadn't figured up the books, I didn't have a chance to figure the books up.

Q. Do you have any records that show the amount of money that was coming to you as commissions?

A. The record is on the books.

Q. Up to what date did they pay you up?

A. They paid me up to 1940.

Q. 1940 or 1939?

A. 1939, pardon me.

Q. To June?

A. Well, January I was paid up.

Q. In other words, on January 1st, 1939 you were all paid up? [490]

A. Not the first, they never paid me just on the minute.

Q. When in your opinion was it that you were paid up to?

A. They used to pay me up, I believe I was paid up to January, 1939, but it was paid up for 1938.

Q. I understand. When was it that you were paid your commissions to the end of 1938?

(Testimony of Sam Kleinman.)

A. When was it what?

Q. When did you receive the check for paying up those commissions you just told us about?

A. I didn't keep track of them.

Q. You claim the Zemanskys owe you \$750, at least, that is one of the items in your claim?

A. Yes sir.

Q. Does that include the I.O.U.'s for \$350?

A. The I.O.U.'s,—I told them——

Q. Mr. Kleinman, can you answer that question yes or no?

Mr. Dienstag: The claim is the best evidence.

The Referee: He asked him this question, which Mr. Kleinman certainly can answer. You have put in an item of \$750. Does that include the I.O.U.'s for \$350? A. I think so.

Q. You think so? A. Yes.

The Referee: All right. [491]

Q. (By Mr. Chotiner): How much in dollars and cents worth of jewelry did you sell in 1939 for the Zemanskys?

A. I am going to tell you the same way as I told my attorney when he asked me. May I, your Honor?

The Referee: Yes, go ahead.

A. He asked me, do you know the real amount you have sold? I said "I hadn't had a chance to figure up the books and the Receiver has the books now."

Mr. Wolver: Will you produce Mr. Kleinman's books, receipt of which we have from the Receiver,

(Testimony of Sam Kleinman.)

in court this afternoon so we may have his books here?

Mr. Laugharn: The books have always been available for the claimant to make his claim up from. He has never been denied access to them. Before he signed his claim, he had the right to see the books.

Mr. Wolver: The record will show that Mr. Kleinman was in San Francisco when he made his claim.

The Referee: I don't think you should make up a claim on the witness stand. If you haven't had access to these books, the Court will put them at your disposal, but to examine the books before Mr. Kleinman goes on the stand and then state what his claim is. Can the books be here this afternoon?

Mr. Laugharn: Anything the Trustee has can be here if available.

The Referee: Let's find out what you are asking for. [492]

Mr. Dienstag: They are the books which will show the sales, being duplicate copies, showing the amount of the sales and the dates upon which they were sold.

The Referee: From what?

Mr. Dienstag: Well, the witness has stated he was paid to the first of January, 1939, so we would want the period from January 1st, 1939 until the date of filing of the petition.

The Referee: Now, what records of Zemanskys



(Testimony of Sam Kleinman.)

would show the payments, if any, to Mr. Kleinman of those commissions?

Mr. Dienstag: I don't know.

The Referee: We should have both. We should have the sales record and the record showing the payments.

Mr. Dienstag: Mr. Yates has examined those books. Perhaps he can enlighten us on whether or not those amounts appeared or not.

Mr. Wolver: He hasn't examined these books.

The Referee: Just a minute, let's ask him. You heard what Mr. Dienstag said, that you had examined the books that he is now asking for, is that so?

Mr. Yates: I have.

The Referee: You have?

Mr. Yates: I have.

Mr. Dienstag: Mr. Yates has told me has examined the books showing payments by the bankrupt, which was what [493] I think your Honor was speaking about.

The Referee: Have you examined the sales records?

Mr. Yates: I have not.

The Referee: You have not, but you have examined the records showing payments made to Mr. Kleinman on commission?

Mr. Yates: That has not been broken down. It is not reflected in the books, your Honor.

Mr. Laugharn: I think we can settle this. There



(Testimony of Sam Kleinman.)

is no question but what from the evidence it is the claimant's contention that he was paid up to 1939, so we have a period from January, 1939, to bankruptcy. Now, the witness is quite positive that he has been paid no commissions in that period. I think we can have the records available showing what the Kleinman sales were upon which he says he is entitled to the one per cent.

The Referee: I think the claimant is entitled to see the original records of the Zemansky Brothers relating to the sales made by him of merchandise and the payments made to him on account of commissions on those sales.

(Discussion between Court and counsel with reference to checking books during the noon hour.)

Mr. Chotiner: There is one question I would like to ask now and take a yes or no answer.

Q. Did you keep any records yourself of the sales of jewelry you made in 1939?

A. I never kept any records. [494]

By Mr. Chotiner:

Q. Mr. Kleinman, after the security contract was signed by you and the Zemansky Brothers, and redemptions would be made of that security, when customers would come in to redeem some of the peldges every few days or so, a new contract would be made out, isn't that correct?

A. Yes sir.

Q. And whenever a new contract would be made

(Testimony of Sam Kleinman.)

out, a new promissory note would also be made out, isn't that right?      A. Yes sir

Q. At that time, you would issue a check to Zemansky Brothers for the amount shown in the promissory note, isn't that true, at least, at the beginning?

A. I can't understand that question.

Q. I will withdraw the question. At the time the new note and the new contract would be made out, you would issue a check to Zemansky Brothers, isn't that right?      A. Yes sir.

Q. And you and Abe Zemansky would go down to the Union [496] Bank and Abe got the check cashed?

A. Yes. The first time I did, the first couple of times.

Q. And when Mr. Zemansky cashed the check, he would give you the money, isn't that right?

A. He came back to the office and handed me the money.

Q. Did you go to the bank with him?

A. Just a couple of times.

Q. When he would cash the check the first couple of times that you went with him, he would give you the money right there in the Union Bank, wouldn't he?

A. No, he usually held it in his pocket and when we got to the office he would give it to me.

Q. Then he would give it to you?      A. Yes.

Q. Then you would deposit the money back in the account again?

(Testimony of Sam Kleinman.)

A. Sometimes I did; sometimes I left it in the drawer.

Q. And Mr. Zemansky, Abe Zemansky, told you that the teller wanted to know why the money was being deposited back in the account again?

A. Well, I would like to explain that.

Q. Did Mr. Abe Zemansky tell you that?

A. What?

Q. Did Mr. Abe Zemansky tell you that the teller at the Union Bank wanted to know why the money was being [497] deposited back in the account again after the check was cashed?

A. Abe Zemansky didn't deposit the money; I did.

Q. You did?           A. Yes.

Q. But Abe Zemansky told you that the teller wanted to know why you were doing that?

A. No, he never told me that.

Q. At any rate, other than the first couple of times, you said that Abe Zemansky went by himself to the Union Bank and got the checks cashed, is that right?           A. Yes sir.

Q. On all of the times that he cashed the checks, he would turn the money over to you at the office, isn't that right?           A. Yes sir.

Q. Sometimes you re-deposited the money and sometimes you would not, is that right?

A. Yes sir.

Q. When you did re-deposit it, it was in the bank account of Jeanette Dienstag, your daughter?

A. Yes sir.



(Testimony of Sam Kleinman.)

Q. And the checks that were made out to Zemansky Brothers were signed by Jeanette Dienstag also?

A. Not by Jeanette; I signed the checks.

Q. You signed them, but in her name? [498]

A. Yes sir, Jeanette Dienstag, S. Kleinman.

Q. Who told you to make out those checks to Zemansky Brothers?

Mr. Miller. Objected to on the ground that it assumes a fact not in evidence, that someone told him.

Mr. Chotiner: Did anybody tell you to do it?

A. Well, I myself and Abe Zemansky were sitting in the office. We had made out a new contract, so Abe Zemansky said to me, "We will have to get busy, we will have to get busy and see whether we can keep that stuff in good shape, so it wouldn't get mixed up." I said "What do you mean by that?" He said "Delivering the company's checks this way and that way; I would like to give you an idea how we should do that." I said "Abe, you can give me an idea but I am no bookkeeper; I don't know how to keep books and I wouldn't even attempt to know how to keep books." He said "I will tell you how we should do that; when we make out a contract, when we give you a contract for a thousand dollars or two thousand dollars, whatever the amount is, let's make out a check and we will keep a checking book account." I said to him "This amount of the loans we have to make over again is quite a lot."



(Testimony of Sam Kleinman.)

I remember something around \$7,000, close to \$8,000. I said "No, I will tell you what I will do. I never figured exactly how much money I got in the bank. I will tell you, Mr. Zemansky, I will go down to the bank and find out just [499] how much money I got." I came back, it didn't take me long, it is right in the same block, and I said "I only got so much money I can make a contract for."

Mr. Chotiner: Keep your voice up.

A. I said "I can only make a contract for so much money." I don't remember exactly how much the contract was, but the contract will prove how much it was. He says "Well, tell you what you do. After we make out this contract we will make out another one, so we will be able to keep track of them." I said "As long as everything is done right, there can't be any objection, I am satisfied." That's the way we did it.

Q. Those contracts were made out for the same amount as the accumulation of redemptions that had taken place and the money had gone into the cash drawer, isn't that true?

A. No, at that time there had been a bunch of pledges lying in a shoe box. The amount of the pledges amounted to around—the figure it is impossible for me to tell unless I can see the contract. That's how much they were. He said "You can make out the whole contract, the whole amount of the pledges we took in for you, we loaned out for you, and we will make one out today, one in a couple of days, until we clean it up."

(Testimony of Sam Kleinman.)

Q. Mr. Kleinman, isn't this what used to happen down there. After the security had been given for the Simons [500] account and the Gans account, isn't this what used to happen? Customers would come in and make redemptions for pledges that had been given to you for security, and a list of those redemptions would be given to you at the end of each day; then every few days you would go over that list and a new contract would be made out for the amount of money that was shown by those redemptions; isn't that correct?

A. Well, my understanding was——

Q. Never mind what your understanding was. Isn't that what used to happen as I have just told it to you?

A. Would you tell it to me again?

Mr. Chotiner: Read the question.

(Question read.)

A. You have reference to the pledges with Simon?

Q. No, I will put it this way to you. Customers would come in to the place of business.

A. Yes.

Q. And make redemptions of pledges that have been given to you for security, isn't that right?

A. Yes.

Q. That money used to go into the cash drawer, isn't that right?      A. Yes sir.

Q. And a list of those redemptions would be given to you at the end of the day? [501]

(Testimony of Sam Kleinman.)

A. Yes sir.

Q. Then every few days you would figure up the amount of those redemptions and a new contract would be made out for that figure, is that right?

A. Yes.

Q. And it was on those occasions that you used to give a check to Zemansky, is that right?

A. When I made out the new contract I used to give him a check, just to show that that substitution was made for a bookkeeping system.

Q. And that money that was represented by that check was turned back to you?

A. Yes, that money.

Q. After you started that system there, or after that system was in operation, there was a change made in the system and the check would be made out for less than the amount of the promissory note, is that true?

A. Less?

Q. Yes. A. Less pledges?

Q. No, after a while down there, a change was made so that the check would be made out for less than the note was made out for and a notation would be put on a piece of paper that the balance was paid in cash?

A. Yes, that was done.

Q. Who told you to do it that way? [502]

A. Abe Zemansky. I told him I didn't have enough money. He said that will be all right so long as we have it on the check that way, it will be my own handwriting and there won't be any dispute about it. [503]

(Testimony of Sam Kleinman.)

By Mr. Chotiner:

Q. Was Abe Zemansky the first person who suggested the changing of the system whereby you made the check out for less than the amount of the promissory notes?

A. Yes, he said to me——

Q. Was he the first one who mentioned that subject?      A. Yes.

Mr. Chotiner: No further questions.

Mr. Dienstag: I think Mr. Kleinman might explain that. He started to.

The Witness: I can explain.

Mr. Chotiner: You may explain.

The Witness: He says those checks would merely run between us, between Zemansky Brothers and ourselves, and myself, just merely to show the transaction. He says, "If you give us a check for \$500 and \$300, and the contract will be for \$2,000, I will put it on the bottom of the check in my own handwriting, paid by cash so much, paid by check so much, and balance so much." I said "Anything you think is right, I am satisfied." [507]

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SAM KLEINMAN,

the claimant, called as a witness in his own behalf, having been previously sworn, testified as follows:

The Referee: Be seated. You have been sworn.

Direct Examination

Q. Mr. Kleinman, approximately when did you first meet the Zemansky Brothers?



(Testimony of Sam Kleinman.)

A. I met the Zemansky Brothers around in 1912 or 1913. [512]

Q. When did you, first of all, ever loan them any money?

A. I loaned them money, the exact time I can't tell. It is a long time back. It must have been around 1925.

Q. Do you remember how many years after 1925 you loaned them money?

A. Oh, I believe I was doing business with them, loaning them money up until around 1928.

Q. Do you know approximately, Mr. Kleinman, how much money you would loan them from time to time during that period?

A. I used to give them at a time \$10,000, \$15,000 and \$20,000.

Q. Were all of these sums repaid to you?

A. Yes, everything was paid up.

Q. After 1928 they owed you no money, during the year 1929 or 1930?

A. After 1928, I believe, yes.

Q. Did you again loan them any money after 1928? A. 1928 I did, yes sir.

Q. When did you first loan them money after 1928? A. In, I believe, 1933.

Q. Did you loan them money after 1933?

A. Yes.

Q. When did you start to work for them, Mr. Kleinman?

A. I started to work for them around the last part of [513] 1935.

(Testimony of Sam Kleinman.)

Q. Do you recall about when you started to work for them in 1935?

A. When they moved up to the new Provident; that was around in October.

Q. How long did you work for them after October, 1935?

A. I worked for them up until the last week in December in 1938.

Q. During that time, did you loan them money from time to time?

A. You mean after 1938?

Q. Yes. A. Yes sir.

Q. Excuse me; I meant after 1935, Mr. Kleinman? A. Oh, yes, yes, yes sir.

Q. What did you do after you quit their employ the last week in December of 1938?

A. In 1938, I went up—I was taking a rest and went up to San Francisco.

Q. For what purpose did you go to San Francisco?

A. I went up to San Francisco to see my daughter and grandchild.

Q. Is that your only child? A. Yes.

Q. Do you recall how long you remained in San Francisco?

A. I was there oh, I believe, a week. [514]

Q. Did you return to Los Angeles?

A. Yes sir.

Q. After you returned to Los Angeles, did you have any conversation with Sol Zemansky concerning the money that was owing to you?

(Testimony of Sam Kleinman.)

A. I did, yes sir.

Q. And do you recall about when that conversation was had?

A. I was in the office a few days. Sol Zemansky came into my office. We sat down and talked about different things, and he asked me, "How do you like to be without doing anything", and I said, "Well, I like it, I want a good rest." Then we talked a lot about things. Then I said to him, "Sol, let's see, I am no more employed by you." I said, "I would like to get my money secured."

Q. Do you recall what, if anything, he said to that, Mr. Kleinman?

A. He said, "Sure, sure."

Q. Was anything further said at that time?

A. No, that is all.

Q. Did you remain in Los Angeles after that time?

A. Yes, I stayed in Los Angeles.

Q. How long did you stay in Los Angeles.

A. Oh, maybe around a couple of weeks.

Q. Then what did you do?

A. I used to go to San Francisco to see my daughter [515] three times a month, sometimes twice a month.

Q. Did you go up to San Francisco?

A. Yes sir.

Q. While you were in San Francisco, did you have a discussion with Mr. Dienstag?

A. With Mr. Dienstag, yes.

(Testimony of Sam Kleinman.)

Q. Did you come down to Los Angeles after that?      A. Yes.

Q. How soon after you had that discussion was it you came down to Los Angeles?

A. With whom?

Q. With Mr. Dienstag.

A. I talked to Mr. Dienstag in San Francisco.

Q. When you returned to Los Angeles, did you come alone or with any other person?

A. Alone.

Q. Do you recall that Mr. Dienstag came to Los Angeles after you did?      A. He came after.

Q. How soon after did he come?

A. Oh, around about a week or two weeks, or something like that. [516]

Q. Was a conversation had there at that time between Mr. Zemansky and Mr. Dienstag?

A. Yes.

Q. Do you recall who was present at that time?

A. Mr. Zemansky, Mr. Dienstag and myself.

Q. Do you recall what was said at that time?

A. Mr. Dienstag said to Mr. Sol Zemansky, "Sol, I understand that you want to give Sam Kleinman security for his money;" so he says "Sure, I will I will secure him." So, Eddie, Mr. Dienstag, said "What have you got, what have you got." So Sol Zemansky started to tell him that they were in so many different enterprises, we are in the loan business, we need a lot of money, and the only thing I will give him, if you want, I will give him the loans, the pledges; so when he told him he was



(Testimony of Sam Kleinman.)

going to give him the pledges, Mr. Dienstag says that will be all right. But then Mr. Zemansky said, "Listen, there is something about the pledge business which I would like to give him, [517] it may not be legal; he said that "The law I had put in myself," so they started talking about law points and all that, something about that, and Sol Zemansky said to him "I will tell you what I will do; I will give you one of my Loan Department tickets and the law is printed on the back of the ticket and you look it up. If you look it up and if it is not against the law, I will be glad to do it." So Mr. Dienstag went out with Sol Zemansky from the office and he gave him that pawn-ticket. After he gave him the pawn-ticket, Mr. Dienstag told Sol Zemansky "I have to go back to San Francisco." He said "I will go to San Francisco and look it up, look up the law and see how it could be arranged."

Q. Did Mr. Dienstag return to San Francisco, if you know?           A. After, yes.

Q. Did he again come back to Los Angeles, Mr. Dienstag?

A. Yes sir, he came back.

Q. Do you remember how soon he returned to Los Angeles?

A. That was around in February.

Q. And were you present at another conversation at that time between Mr. Zemansky and Mr. Dienstag?           A. Yes.

Q. What was that conversation?

(Testimony of Sam Kleinman.)

A. Well, that conversation was, Mr. Dienstag came back and told him, he said "Mr. Zemansky, you are right [518] about the pledges being re-loaned." He said "I looked it up and you are right, but you don't have to give us the pledges. We can make a different contract which would not affect the pledges at all." So they talked some about the legal points about it and everything, and Sol Zemansky said "Mr. Dienstag, anything you do and if it is right I am glad to do it."

Q. Did Mr. Dienstag have some notes with him at that time?

A. He had some yellow paper written down or something, which he read it to Sol Zemansky.

Q. Was there a later conversation, Mr. Kleinman?

A. Yes, there was a later conversation.

Q. Do you recall if Mr. Dienstag had anything with him at that time?

A. The second time?

Q. Yes.

A. Yes, the second time he had a form of a contract.

Q. What color paper was it written on?

A. It was something like this here.

Q. A yellow piece of paper?

A. Yes, a yellow paper and he had it all lined out, how it could be done, and he talked to Mr. Zemansky and Mr. Zemansky took it and read it, and after he got through reading it Sol Zemansky

(Testimony of Sam Kleinman.)

said to him, "I think that is just fine; I am glad to know that, that it could be made that [519] way and I think that I can take that same contract and go to any bank and get money on it."

Q. Do you remember any discussion at that time concerning some notes in the name of Golob?

A. Max Golob.

Q. Do you remember what the discussion was in regard to the Golob note?

A. Yes sir. After Mr. Dienstag talked with Mr. Zemansky about the contract and everything, Mr. Dienstag said to him, "Now listen, Sol, I am going to draw that contract, I want you to tell me all the conditions and the different ways you did business with Mr. Kleinman." He said "I understand that he had notes at twelve per cent, had notes at ten per cent, and Mr. Zemansky said "Mr. Dienstag, I wouldn't worry about that, you know we are not so particular one way or the other with Mr. Kleinman. He has given us a lot of money off and on, and furthermore, there is no usury, there is no usury, and the last man in the world I would ever do any harm to is Mr. Kleinman, and I am the one to know what usury is, because I was the one who killed the usury." So Mr. Dienstag said, "Well, I don't know about that; I know that there is usury, and if I make out that contract, if I make out that contract," he says, "I want you to tell me if you did pay him any usury, if you did pay him, do you waive it." He said, "One hundred per cent; I have no claim against him." [520]



(Testimony of Sam Kleinman.)

Mr. Wolver: Q. Do you recall a conversation being had in your presence between Mr. Sol Zemansky and Mr. Kravitz about picking out pledges that evening?

A. Well, after Sol Zemansky was satisfied with the contract, we left my office and went into Joe Zemansky's office, Mr. Zemansky and Mr. Dienstag, and he called out, he said, "Mr. Kravitz"—he called him Leo; he said "Leo, I want you to go and pick out \$100,000 worth of pledges to be placed in Mr. Kleinman's loan."

Q. Was a different contract prepared by Mr. Dienstag, was a white copy of the contract, a finished [521] copy, prepared by Mr. Dienstag?

A. A white copy was prepared by Mr. Dienstag, yes sir.

Q. Do you remember when you signed those copies; I don't mean the date, but do you remember signing those copies? A. Yes sir.

Q. How many copies did you sign?

A. I signed two copies.

Q. Do you recall how long before you signed these copies it was that this conversation was had when Mr. Kravitz was told to pick out the pledges?

A. It was the next day.

Q. After you signed the copies you gave them to Mr. Dienstag, didn't you? A. Yes.

Q. Both copies?

A. Both copies, yes sir.

Q. Do you know if Mr. Dienstag went to San Francisco that night?



(Testimony of Sam Kleinman.)

A. Mr. Dienstag wanted Sol Zemansky to sign it and Sol Zemansky, he was told by Abe Zemansky, that he left for San Francisco. Mr. Dienstag says "That's a nice way to do after me working so hard and I find out now that he is going to leave." He said "Sol went away in an awful hurry, but he will be back in a day or so;" so Mr. Dienstag said that he has to be in San Francisco himself; so he left that night. [522]

Q. Now, do you recall when—you are acquainted with the pledge tickets, aren't you, the stubs?

A. Yes sir.

Q. Do you recall whether or not Abe Zemansky picked out the stubs corresponding to the pledge tickets?

A. Yes sir.

Q. Do you remember when he picked those out, Mr. Kleinman?

A. Well, he picked them out, I think he picked them out about the second day; he started to pick them out right away, you know, but he could not finish them; it took him quite a while to finish them, about the next day.

Q. Do you remember when they were picked out what he did with those pledge tickets?

A. He put them in a separate book like the other pledge books are.

Q. Was any mark put on those books?

A. Yes, he had them in a pledge book like the other pledge books are, and he took a pencil and copied a mark on the pledge tickets, like this is the pledge ticket, with a letter capital K.

(Testimony of Sam Kleinman.)

Q. That was on the back of the book?

A. Not on the back, on the pledge book, I mean like this.

Q. On the edges of the pledge book?

A. Yes. [523]

Q. Did he ever give those books to you?

A. When he had them picked out?

Q. Yes.

A. I understood the contract had to be signed and I had to sign for having received the pledge tickets so I went to Mr. Horn when they were all ready and Mr. Horn came out with those two contracts.

Q. Were they white pieces of paper, Mr. Kleinman? A. Yes, white pieces.

Q. What was done with them?

A. Well, Mr. Horn says, "Have you got the pledge books?" I said, "Yes, they are right here." We went in Abe Zemansky's office and Abe Zemansky was there, and he asked me to sign the contract, that I received the pledge tickets. After I signed for the pledge tickets, he asked Abe Zemansky to sign the other one.

Q. Where were the pledge books at the time these were signed?

A. In Abe Zemansky's office.

Q. They were right there on the desk?

A. Yes.

Q. And you signed it first and then he signed it?

A. Then Abe Zemansky signed.

(Testimony of Sam Kleinman.)

Q. Did you remain in Los Angeles after that?

A. No, I believe, I remember real sure the same night [524] I went to San Francisco.

Q. Mr. Kleinman, do you recall having a telephone conversation while you were in San Francisco with Sol Zemansky in Los Angeles?

A. Yes, I believe it was about two days after I was there.

Q. And do you recall relating that telephone conversation to Mr. Chotiner, you told Mr. Chotiner?

A. Yes sir.

Q. Pursuant to that telephone conversation, you [525] returned to Los Angeles?

A. Yes sir, the next day, the next morning.

Q. Do you recall whether or not, Mr. Kleinman, while you were in San Francisco, you saw a copy of the contract signed by Sol Zemansky?

A. Yes sir. Mr. Dienstag had it in his office.

Q. And do you know the signature of Sol Zemansky?      A. Oh, yes.

Q. Is that his signature?      A. Absolutely.

Q. I believe you also told Mr. Chotiner that Mr. [526] Dienstag was requested by Judge Pacht to come there the following morning and assist a Mr. Ross of Judge Pacht's office in the drawing of the contract?      A. Yes sir.

Q. Do you recall that Mr. Dienstag came back to the office after that occurred?

A. After the conversation?

(Testimony of Sam Kleinman.)

Q. After he had been with Mr. Ross?

A. Yes, he came back. I believe he was several times in the office.

Q. Do you recall a conversation had between him and Sol Zemansky concerning this contract that Mr. Ross was preparing for the Simons?

A. Yes sir, he said "Well, Mr. Zemansky, the contract is all made up; all you have to do is just give the pledge numbers and Judge Pacht's office will put them in the contract, and I am leaving tonight." That is, I believe Mr. Dienstag said he wanted to leave about the 8:00 o'clock train, so Mr. Zemansky says, "Eddie, can't you do me a favor and stay right here until I clean up the whole contract" he said, "Sol, I would like to do it for you, but on account of my interests I have got to be in San Francisco, I have got to be there." He says "How about staying and fixing it up with me and take the airplane, to go back home." Eddie didn't like it because he never went in an airplane, so it looked funny to me and when he [527] said that I said to him myself "Eddie, you never tried it, try it once." Then he went to Mr. Leo Kravitz to pick out the pledges and Kravitz said "I can't do it so quick; it is late now for dinner," like that, so Sol says to me "Sam, to save a lot of time, to save a lot of time can't you do this for me; can't you let me pick out a certain amount of pledges from your pledges and make out the numbers and give them to Judge Pacht, and then we will pick out others for you



(Testimony of Sam Kleinman.)

right away, which we will have a lot more time to do, and Mr. Dienstag will be there, he will be able to go home." I turned around and I looked at Mr. Dienstag and I said "Eddie, what do you think about it"; he said "Well, I don't see any harm in that if he gives you other pledges for it." I agreed to it, and Sol Zemansky said "You know, Sam, while you were away those few days we collected close to \$4,000 on your pledges, while you were away which I have the ticket for, the slips for every day, every time merchandise is delivered to the customers."

Q. You mean the daily report?

A. The daily report. And he said "How about letting us re-loan that money from you." I promised them I would go and stay with them a few months more to help them out. He said "You promised you will stay with us a little longer; we will be busy and you know we would like to have you with us a little longer since you know about doing [528] that." I looked at Eddie again and Mr. Dienstag said "Well, I will tell you, Mr. Zemansky, if you want to take Mr. Kleinman's pledges that come in, the money that comes in from his pledges, I want it understood that all pledges coming in in this office belong to Mr. Kleinman and the money he loans for the pledges." So he said "How about picking new pledges for that \$4,000 and putting it in a contract." I said "That will be all right." So that new contract was changed for around \$4,000.

Q. Was there anything said at that time, Mr.

(Testimony of Sam Kleinman.)

Kleinman, in regard to what use the money that came in on your redemptions could be put?

A. To loan out on new pledges, and I understand Mr. Dienstag gave him to understand at that time, and he told him right in front of me, he says "Sol, I want every dime and every dollar that belongs to Mr. Kleinman loaned out, but I want every pledge that comes in to belong to Mr. Kleinman."

Q. Do you recall Mr. Dave Zemansky being present at all?

A. Yes, that night, on that night, when they signed Mr. Simon's contract; Sol Zemansky was there, Abe Zemansky and Dave Zemansky all three of them, because they had to sign that contract. Simon didn't want to leave the place until they signed the contract, wanted to take the contract along with them. So Dave Zemansky says, "Sam, as you are willing to let us re-loan your money, how about giving [529] us some fresh money." He said that to me and to Mr. Dienstag, he talked with me and Mr. Dienstag talked to me, Mr. Dienstag said "It is not my money, whatever Mr. Kleinman agrees, if you do it like I told you to, with his money, I think you can do it."

Q. Did Mr. Sol Zemansky or Dave Zemansky say they would?

A. Oh yes, they were all there together, all three of them.

Q. Did you have the other pledges picked out, or did Mr. Kravitz pick out the pledges the next day for you?

(Testimony of Sam Kleinman.)

A. You mean for the exchange of the Simon's?

Q. Yes.

A. I believe he started that same night, after he was through picking out my pledges, but he hadn't finished it up until the next day.

Q. Then you signed the contract on the next day?

A. Yes, I believe it was the next day, the next day or the day after; it was right away.

Q. After that, did you receive these slips showing what redemptions had been made the day before on your pledges?

A. Yes sir.

Q. And you kept track of those slips?

A. Yes.

Q. Did you ever add them up, Mr. Kleinman? [530]

A. Yes sir.

Q. How did you add them up?

A. Well, if I had one I wouldn't add it up, I could just see it was about \$500 or \$600, but when I had a few redemptions I used to go in Joe Zeman-sky's office, he had an office there, and they had an adding machine and then I would add them up.

Q. Did you ever see what was being done with the money that came in on your pledges?

A. When a customer came in and took the pledges, other ones put pledges in.

Q. Was any record kept of the loans that were made there daily?

A. Oh, yes.

Q. In what book was that, do you recall?



(Testimony of Sam Kleinman.)

A. You mean for the whole business?

Q. Yes.

A. They made out a sheet every day, how much pledges went out and how many pledges they took in.

Q. Did you ever look at that sheet?

A. I didn't look at that sheet down there, because I wouldn't understand it, but I seen pledge tickets where they delivered for mine, my pledge tickets. My pledge tickets had the initial "K", every pledge ticket had the initial "K", knowing that that pledge ticket was for merchandise put away for me. [531]

Q. Did you ever go into the vault after March 1st?      A. No sir.

Q. Did you see where they were keeping the pledges that came in after March 1st?

A. They kept them in a lot of shoe boxes.

Q. Did you see any marking on those boxes?

A. They had a lot of shoe boxes and the pledges were in there, and then on the top of the shoe box was a piece of paper where they used to describe on the paper with a letter "K".

Q. Did you ever discuss that with any person, why they were kept in shoe boxes.

A. No, I knew it was kept for me.

Q. Did anyone tell you that? [532]

A. Well, I knew it, Kravitz always made the remark to me.

Q. What did Mr. Kravitz say?



(Testimony of Sam Kleinman.)

A. Mr. Kravitz says, "When are you going to book that stuff for yourself; you know that belongs to you." [533]

Q. The second one is the 2nd day of March, 1939, which we have discussed as the contract relating to the Simon contract. The next one is on the 22nd day of March, 1939; do you recall when that contract was made and entered into, do you recall making the contract about that time?

A. Yes, surely.

Q. Do you recall it was in the sum of \$2,150?

A. Yes.

Q. Prior to the making of that contract, did you have any conversation with any of the Zemansky boys?

A. Yes, I talked to Abe Zemansky about that.

Q. All right. About when did you talk to Abe Zemansky?

A. Just before I started to make that contract.

Q. Who was present at that time?

A. Just me and him.

Q. And what was said? [534]

A. Well, Abe says, "We are going to have a lot of contracts here to sign, the way the goods goes out and comes in." He said, "We have to have some system about it." I said, "Do you know of any system which we can have?" He said, "I am going to have a book where I am going to stamp the pledges with the seal, and if you are going to make out any contracts like for around \$7,000 or \$8,000, why not

(Testimony of Sam Kleinman.)

give us a check and we will run a checking system.” That sounded pretty good to me, that checking system. I said, “Abe, I don’t think I got that kind of money in the bank; I will run down and find out how much I have.” I came back and told him about the amount of money I can put out and he said, “Well, you don’t have to have it on one contract; you make a contract today and in a couple of days later you make another one.”

Q. Do you recall how much money you told him you could pay out?

A. Well, I told him the first contract was \$2500 and the pledges amounted to \$2510.

Q. Is that why the contract was made out in the sum of \$2510?      A. Yes.

Q. Was anything credited on the old notes at that time?      A. Yes.

Q. How much?

A. Now, you see, the idea was, that’s why he brought [535] that out, that’s what the real idea was for him to bring that out to me. He said, “I will give you new contracts, new notes, and you can have the old notes.” He said, “That’s the only way I can see to do; we are going to give you new notes and you mark one of the notes, on the old notes, how much credit you give us.” So I wrote, after we made that new contract so much money I wrote out on the back of the old note, credited so much. [536]

A. The 5th day of April, 1939, this was a contract, which I made quite a few of them, that was

(Testimony of Sam Kleinman.)

an exchange of pledges for the Gans transaction.

Q. Do you remember when the Gans transaction was first discussed with you?

A. That was talked to me about a couple of days before.

Q. Did you have any conversation with any person?  
A. Sol Zemanksy came in my office.

Q. What was said?

A. He said to me, "Sam you know we owe a little money to Bob Gans." I was surprised, I never knew they owed him any money; so I said, "You owe him money, too?" So he said, "We don't owe him much, but he is a good friend of Simon, Bill Simon," and he came up and asked me if I would not do the same thing as we did with the Simons. So he said, "You see, the pledges we have right now on hand are redeemable very fast, pledges that we have coming in. I would like to exchange pledges with you and give him pledges that don't go out so fast." [538]

Q. Which ones were the ones that would go out so fast, Mr. Kleinman, were they older pledges?

A. Older pledges, old pledges.

Q. Which ones were the ones that didn't go out so fast, new pledges?

A. New pledges, just put in.

Q. What did you say to that?

A. I said, "Well, I don't think there is anything wrong about that," and I let him do it.

Q. And you made the exchange?

(Testimony of Sam Kleinman.)

A. I made the exchange.

Q. Do you remember when your pledges were picked out again?

A. My pledges were picked out, I believe, the same day.

Q. The same day you had this conversation?

A. Yes, the conversation.

Q. Do you remember when the Gans contract was signed? A. No.

Q. Your pledges you started to pick out on the same day? A. Yes.

Q. Do you remember how many pledges were transferred to the Gans account?

A. I believe over \$12,000.

Q. And did you receive the same number of pledges? [539] A. Yes sir.

Q. Was all of this handled by this checking method?

A. Yes, the same way, the same way.

Q. And the amount of your contract was limited by the amount of the check that you could draw from time to time? A. Absolutely.

Q. And so you would make a contract in proportion to the amount of money that you could draw out?

A. Yes, make a new one, make a new one.

Q. Until all of the money that was coming to you was taken care of by contract? A. Yes.

Q. During all of this time, did they continue to have these boxes, and so on?



(Testimony of Sam Kleinman.)

A. All the time.

Q. They always had a "K" on them?

A. Yes sir.

Q. You saw them?                      A. Yes sir.

Q. I understand, Mr. Kleinman, that on the day that you had this conversation, that you would give them certain pledges, newer pledges to be given to Gans, they started to pick out pledges to replace those?                      A. To replace mine.

Q. And they were also put in paper bags, and marked "K"? [540]

A. Yes, marked "K," kept them right there until I made out the contract.

Q. Who did that?

A. Leo Kravitz, he was the only one that always done that.

Mr. Wolver: Mr. Laugharn, I understand the books of Zemansky Brothers indicate, and I ask for a stipulation, that Mr. Kleinman received no salary between the last week in December and the first week in March, 1939. I believe Mr. Young and Mr. Yates can verify that for you gentlemen.

Mr. Chotiner: You want us to stipulate that he received no salary during that period?

Mr. Wolver: Yes, I believe Mr. Young and Mr. Yates can verify that.

Mr. Laugharn: He certainly could testify what the fact was. I don't think you need our stipulation, do you?

Mr. Wolver: As to what the record will show. There has been some question as to what the record showed.

(Testimony of Sam Kleinman.)

Mr. Laugharn: Who examined the record?

Mr. Wolver: I believe Mr. Young and Mr. Yates both did. It should save some of the Court's time rather than [541] introduce lengthy records.

Mr. Laugharn: Here is the effect of what they are stipulating. They have inspected the books and the last check in 1938 was December 24, 1938, \$74.25, and the first check in 1939 was March 11, 1939, \$49. That's what the record shows.

Mr. Wolver: May we have that so stipulated?

Mr. Laugharn: So stipulated on our part. [542]

Q. By Mr. Wolver: Mr. Kleinman, I show you five white sheets of paper with pencil writing thereon. Have you ever seen those sheets before?

A. Yes sir.

Q. Do you know what they are?

A. Those are pledges picked out for me.

Q. Isn't this in the Gans transaction?

A. On the Gans transaction.

Q. Were these picked out in one day?

A. Those were picked out in one day.

Q. Was this given to you in one day?

A. Yes sir.

Q. Was it given to you the same day you had this transaction? A. Yes sir.

Q. Calling your attention to the columns, there are four columns on the page. Does the first column indicate [544] the pledge number?

The Referee: I think that is obvious, Mr. Wolver; you don't need to ask this witness that.

(Testimony of Sam Kleinman.)

Certainly, in this record that is clear. There is the number and the amount referred to.

Mr. Wolver: As long as the Court is satisfied it is in the record.

The Referee: I don't think anybody can be confused on that in this record.

Mr. Wolver: I will offer this in evidence as Kleinman's Exhibit next in order.

Mr. Chotiner: Objected to on the ground that it is immaterial. It does not do any more than indicate the record.

The Referee: Overruled. This will be Kleinman's Exhibit 8.

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## KLEINMAN'S EXHIBIT No. 8

### KLEINMAN G-1

		1262.50
102.....	20.	11427..... 35.
217.....	25.	11515..... 25.
677.....	25.	11831..... 25.
745.....	30.	11913..... 20.
1092.....	30.	12210..... 25.
1378.....	25.	12229..... 45.
1480.....	30.	12570..... 45.
1685.....	30.	12682..... 40.
1886.....	20.	12909..... 20.
2719.....	40.	12925..... 40.
2868.....	20.	12936..... 30.
3082.....	40.	13014..... 45.
3146.....	40.	13032..... 35.
4204.....	20.	13154..... 20.
4243.....	20.	13260..... 25.
4487.....	25.	13606..... 20.

## (Testimony of Sam Kleinman.)

## Kleinman G 1—(Continued)

4524.....	25.	13679.....	20.
4727.....	40.	13797.....	40.
4756.....	35.	13806.....	35.
4923.....	20.	14033.....	20.
5193.....	40.	14148.....	20.
5251.....	30.	14190.....	20.
5583.....	25.	14219.....	20.
5678.....	25.	14232.....	20.
5745.....	25.	14238.....	20.
6407.....	25.	14317.....	25.
6681.....	20.	14411.....	30.
6778.....	27.50	14684.....	20.
6878.....	40.	14694.....	20.
7142.....	35.	14792.....	20.
7231.....	25.	14800.....	30.
7355.....	30.	15061.....	20.
7454.....	20.	15117.....	30.
8150.....	25.	15096.....	25.
8162.....	25.	15126.....	20.
9007.....	25.	15191.....	25.
9558.....	20.	15257.....	30.
9586.....	25.	15365.....	40.
9640.....	20.	15562.....	25.
9782.....	35.	15641.....	20.
10385.....	20.	15849.....	20.
10607.....	25.	15877.....	20.
10677.....	20.	15885.....	25.
10696.....	35.	15897.....	20.
10883.....	20.	15990.....	30.
10923.....	20.	16094.....	20.
11205.....	20.	16117.....	20.

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1262.50

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2507.50



(Testimony of Sam Kleinman.)

## KLEINMAN H 1

1230.

16129.....	35.	21141.....	25.
16132.....	20.	21207.....	20.
16306.....	25.	21232.....	20.
16322.....	20.	21307.....	25.
16343.....	25.	21396.....	30.
16366.....	20.	21526.....	25.
16445.....	20.	21699.....	30.
16609.....	25.	21736.....	40.
16714.....	35.	21886.....	35.
16907.....	20.	22011.....	20.
16925.....	20.	22138.....	20.
17169.....	20.	22437.....	45.
17276.....	30.	22444.....	20.
17531.....	40.	22448.....	25.
17539.....	25.	22522.....	40.
17614.....	25.	22554.....	25.
17642.....	20.	22564.....	20.
17742.....	20.	22740.....	30.
17798.....	40.	22792.....	35.
17819.....	20.	22810.....	20.
17826.....	30.	22899.....	25.
18258.....	40.	22919.....	20.
18378.....	25.	22979.....	40.
18399.....	30.	23078.....	20.
18400.....	20.	23090.....	35.
18401.....	25.	23152.....	40.
18424.....	20.	23190.....	25.
18435.....	20.	23241.....	35.
18928.....	30.	23579.....	25.
19046.....	45.	23637.....	35.
19321.....	20.	23654.....	35.
19333.....	20.	23693.....	20.
19478.....	40.	23760.....	30.
19586.....	20.	23772.....	20.
19628.....	30.	23780.....	45.
19817.....	25.	23830.....	25.
19847.....	20.	23840.....	35.

(Testimony of Sam Kleinman.)

## Kleinman H 1—(Continued)

19878.....	25.	23898.....	30.
20017.....	30.	23986.....	40.
20172.....	20.	23295.....	20.
20244.....	20.	23327.....	35.
20348.....	30.	24058.....	20.
20509.....	20.	24075.....	25.
20568.....	30.	24205.....	30.
20830.....	30.	24228.....	25.
21073.....	40.	24331.....	30.
21077.....	20.	24457.....	30.
<hr/>		<hr/>	
1230.00		2575.	

## KLEINMAN J 1

1307.00

29035.....	40.	30719.....	20.
29044.....	25.	30748.....	25.
29070.....	25.	30752.....	20.
29089.....	35.	30872.....	40.
29128.....	20.	30966.....	25.
29133.....	40.	31003.....	20.
29155.....	20.	31022.....	20.
29172.....	45.	31040.....	20.
29198.....	20.	31081.....	20.
29233.....	30.	31136.....	25.
29251.....	30.	31141.....	25.
29313.....	20.	31145.....	40.
29318.....	20.	31155.....	20.
29347.....	20.	31156.....	30.
29384.....	30.	31186.....	20.
29451.....	20.	31188.....	35.
29462.....	40.	31227.....	30.
29468.....	20.	31234.....	40.
29547.....	35.	31261.....	40.
29567.....	20.	31292.....	20.
29570.....	40.	31298.....	40.
29580.....	30.	31314.....	30.

(Testimony of Sam Kleinman.)

Kleinman J 1—(Continued)

29583.....	20.	31330.....	20.
29597.....	30.	31362.....	30.
29606.....	47.	31366.....	25.
29632.....	40.	31373.....	25.
29789.....	30.	31392.....	30.
29767.....	25.	31446.....	25.
29797.....	20.	31504.....	40.
29920.....	35.	31510.....	40.
30202.....	35.	31647.....	20.
30208.....	20.	31674.....	35.
30216.....	20.	31688.....	20.
30374.....	20.	31705.....	20.
30409.....	20.	31728.....	25.
30429.....	20.	31772.....	35.
30456.....	20.	31785.....	27.
30461.....	25.	31806.....	35.
30494.....	30.	31812.....	20.
30506.....	20.	31869.....	35.
30582.....	35.	31901.....	40.
30594.....	20.	31965.....	30.
30609.....	30.	31976.....	25.
30662.....	30.	31979.....	20.
30683.....	40.	32039.....	20.
30688.....	25.	32159.....	30.
30690.....	25.	32171.....	30.

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1307.00

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Total 2614.

KLEINMAN I 1

		1195.
24488.....	30.	26995..... 25.
24593.....	25.	27056..... 25.
24610.....	20.	27123..... 30.
24636.....	20.	27041..... 30.
24648.....	20.	27127..... 25.
24661.....	20.	27131..... 30.
24786.....	30.	27141..... 85.

## (Testimony of Sam Kleinman.)

## Kleinman I 1—(Continued)

24844.....	40.	27143.....	20.
24868.....	25.	27204.....	20.
24915.....	25.	27284.....	25.
24917.....	20.	27358.....	40.
24949.....	20.	27492.....	20.
25165.....	20.	27604.....	35.
25209.....	25.	27605.....	20.
24912.....	25.	27613.....	30.
25497.....	20.	27622.....	35.
25254.....	30.	27692.....	20.
25563.....	35.	27725.....	20.
25597.....	30.	27744.....	40.
25661.....	30.	27755.....	35.
25698.....	20.	27764.....	20.
25771.....	20.	27902.....	40.
25847.....	40.	27928.....	35.
25854.....	35.	28023.....	40.
25897.....	20.	28048.....	20.
25969.....	25.	28135.....	20.
25984.....	25.	28140.....	35.
25989.....	25.	28144.....	30.
26055.....	30.	28186.....	25.
26089.....	20.	28247.....	25.
26094.....	35.	28261.....	20.
26122.....	20.	28282.....	25.
26234.....	30.	28289.....	25.
26400.....	20.	28307.....	30.
26408.....	45.	28309.....	30.
26424.....	20.	28317.....	35.
26482.....	20.	28408.....	30.
26515.....	40.	28424.....	20.
26597.....	20.	28471.....	20.
26767.....	25.	28517.....	20.
26912.....	25.	28524.....	35.
26915.....	30.	28540.....	45.
26952.....	25.	28607.....	20.
26977.....	25.	28638.....	20.



(Testimony of Sam Kleinman.)

Kleinman I 1—(Continued)

26985.....	20.	28780.....	30.
26986.....	25.	28814.....	20.
		28932.....	30.
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1195.00		2500.	

KLEINMAN K 1

Ford. 1505.00

32174.....	30.	33235.....	30.
32223.....	25.	33250.....	30.
32231.....	30.	33262.....	25.
32256.....	30.	33274.....	30.
32305.....	20.	33301.....	25.
32318.....	25.	33312.....	22.50
32340.....	30.	33336.....	35.
32342.....	20.	33341.....	25.
32353.....	35.	33384.....	40.
32364.....	40.	33388.....	25.
32408.....	45.	33406.....	35.
32459.....	20.	33423.....	30.
32464.....	25.	33461.....	20.
32491.....	20.	33510.....	35.
32496.....	35.	33516.....	40.
32552.....	40.	33530.....	25.
32560.....	20.	33539.....	20.
32562.....	25.	33540.....	35.
32643.....	30.	33544.....	40.
32655.....	25.	33587.....	20.
32668.....	25.	33592.....	35.
32689.....	35.	33613.....	20.
32734.....	20.	33652.....	40.
32792.....	25.	33677.....	20.
32796.....	20.	33690.....	30.
32826.....	35.	33717.....	20.
32848.....	200.	33777.....	35.
32858.....	25.	33813.....	35.
32861.....	20.	33861.....	35.

(Testimony of Sam Kleinman.)

Kleinman K 1—(Continued)

32881.....	20.	33872.....	40.
32895.....	20.	33876.....	20.
32975.....	20.	33884.....	40.
32991.....	20.	33907.....	25.
33050.....	20.	33918.....	20.
33062.....	20.	33924.....	20.
33067.....	35.	33928.....	25.
33090.....	25.	33986.....	37.50
33108.....	35.		
			<hr/>
			2590.
33155.....	35.		
33166.....	35.		
33173.....	40.		
33201.....	25.		
33215.....	20.		
33218.....	35.		
33224.....	20.		
33225.....	40.		
			<hr/>
			1505.00

[Endorsed]: Filed Aug. 26, 1940.

Mr. Wolver: May we have that ledger sheet, your Honor?

The Referee: Yes.

Q. By Mr. Wolver: I am calling your attention to Trustee's Exhibit No. 6, Kleinman's Exhibit 6, calling your attention to June 2nd, when a contract in the sum of \$3,750 was made, and call your attention that no credit was made on that same date upon the old note as shown by this exhibit; does that recall anything to your mind?

(Testimony of Sam Kleinman.)

A. Yes sir, I remember that.

Q. What was that?

A. The \$3,750, that was money they owed me in I.O.U.'s [545] and I gave them more money and made out a contract for it.

Q. The I.O.U.'s represented other money?

A. Other money I gave them.

Q. Was that given to them after March 2nd?

A. After March 2nd, yes.

Q. And at the same time you gave them additional money?

A. Additional money and made out a contract for that much.

Q. Calling your attention to the contract of July 5th in the sum of \$2400.

A. July 5th, that is, as I remember, that was the last contract I made with them. On July 5th Dave Zemansky came up to the office and he said, "Sam, I think it is time to pay you the interest," and he gave me \$2400 in \$100 bills and I gave him a receipt, "Paid interest, \$2400, S. Kleinman," and he took it and I took the money and put it in a drawer in my desk where I always kept my money. Mr. Zemansky left my office and went in the other office to talk with Sol and everybody else there, like he usually does, and it was around about in the afternoon he comes back to me and he says, "Sam," like he always would call me by my first name, "Sam, do you need that money that I just paid you this morning?" I said, "Well, I don't really need

(Testimony of Sam Kleinman.)

it pretty bad right now, but I might need it.” He [546] said, “Could you let us have it; we will give you pledges for it and a contract for it.” I said, “I will make a contract with you for it, but I haven’t got any contract, I will have to go and have one made.” So I had a copy that Mr. Dienstag left with me and I took that copy up to the stenographer in the same building, the stenographer for the building in the building upstairs, I believe it was on the ninth floor, somewhere around there, the ninth floor in the same building, and I gave her that copy that Mr. Dienstag had given me, I didn’t want to use it, and I told her to copy me a contract exactly as this one and in the meantime Leo picked out the pledges; by the next day I had everything ready and Mr. Dave Zemansky came up and I made them all sign and I gave him back the identical money he gave me.

Q. By Mr. Wolver: Mr. Kleinman, during the time you were employed at Zemansky Brothers, did you ever hear any discussions occurring there of other interests?

A. I never talked to anybody and I never had much time to discuss with the employees down there about any of the Zemansky business.

Q. Did you know that they were engaged in other enterprises other than pawnshops?

A. Yes sir.

Q. Did you ever discuss with any person their estate in [547] Reno?



(Testimony of Sam Kleinman.)

A. Well, that was known around the office to everybody, the business in Reno.

Q. Did you ever discuss that with any of the Zemansky boys?

A. The time when they fixed that place up, the time when they fixed that place up, Sol Zemansky said, "This is going to be a gold mine."

Q. Did he ever discuss with you whether or not he was making money on that place after that?

A. Yes, he said they are making money.

Q. What period of time did he tell you they were making good money in Reno?

A. Oh, right along, even the last month or so before they closed up the place.

Q. That would be in June of 1939, he said they were making good money in Reno?

A. Yes, they were making money.

Q. Did he ever discuss with you El Cerritos, that is the 333 Club?

A. I tell you, I don't remember it by the name, but I know just about where it was, yes.

Q. This would be in Oakland, is that right?

A. In Oakland. I was out to that place myself.

Q. Did he say anything to you about that place?

A. He said the first month we opened we got out our [548] money out of it, now, it is clear.

Q. Did he ever discuss with you the Play House in Butte, Montana?

A. I understood they had one down there, but I don't remember if he did or not.

Q. Going back to this place in Oakland, did he

(Testimony of Sam Kleinman.)

discuss with you after you were there, did he ever tell you how much they were making there?

A. I was there, I believe, with Mr. Dienstag, when I was in San Francisco. Mr. Dienstag drove me out there.

Q. Did he ever tell you how much he was making there?

A. He said business was very, very good.

Q. Over what period of time did he discuss that with you?

A. Oh, it is hard to tell, you know, I never asked him too much about his personal business. When he told me I just listened to it.

Q. Over what period of time did he discuss the Play House in Butte, Montana, with you?

A. He told me that that place is doing pretty good, I think it will do just as good as in Reno.

Q. He told you that Reno was making a lot of money?

A. A lot of money, yes.

Q. Did he ever discuss the Redondo property with you, his Redondo property?

A. Yes, when I was out driving with him, he wanted to [549] go to Ocean Park and from there he drove down to Redondo, and from Redondo he wanted to go down to Seal Beach, wanted to look at some property there and I was with him, you know, and he said to me at Redondo, "You see that piece of property right there, we bought it from the Southern Pacific."

(Testimony of Sam Kleinman.)

Q. Did he tell you how much money he was making?      A. Oh, yes.

Q. He was making from that property?

A. He said that property paid right off real good, the minute he bought it.

Q. Over what period of time did he discuss with you the Redondo property?

A. Not many times.

Q. Was it after January of 1939?

A. Oh, right along, yes.

Q. Was it after March of 1939?

A. He used to come in my office and talk until about the last month before they closed up.

Q. And he continuously told you he was making good money on all these properties?

A. On all these properties.

Q. Did he ever discuss with you the Palace of Amusement Enterprise?

A. I will tell you, they had so many places I don't remember exactly every one of them. [550]

Q. Do you remember the Neptune at Long Beach?

A. Yes, I remember that one.

Q. Did he ever tell you anything about the Neptune?      A. I was there with him.

Q. About when were you there with him?

A. I was there with him, I believe, I don't remember, it must have been around 1937 when I was there with him.

Q. Did he tell you what he was doing there then?

(Testimony of Sam Kleinman.)

A. He said they are doing pretty good.

Mr. Chotiner: Was that in 1937 you are referring to?

Mr. Wolver: Yes.

Q. Did he discuss that Palace of Amusement with you after 1937?

A. I believe after that he told me, or Abe told me, they closed that up, they got their money out of it, made a profit and closed it up.

Q. Do you remember discussing with him the Bay Shore property?

A. The Bay Shore property?

Q. Yes.

A. I believe I saw the Bay Shore property, but they didn't run it when I saw it.

Q. Did he ever tell you they made money there?

A. Oh, yes, he said they made money on that, made more money down there than any other place except Reno.

Q. How late did he tell you that? [551]

A. Bay Shore? Bay Shore was pretty early. I don't believe in was in 1938.

Q. It was before 1938? A. Yes.

Q. He told you they made plenty of money?

A. Yes, he always made money in that place.

Q. Did he ever discuss with you the Boulevard at Belmont Shores? A. No.

Q. Did you ever discuss with him any property out in Glendale?

A. Yes, I knew all the time.



(Testimony of Sam Kleinman.)

Q. What did he say about that?

A. He said, "We have a fine piece of property down there." He said, "It cost us \$125,000, and we will put up a building there," what do you call it for boxing?

Q. An arena.                      A. No, no.

Q. Ring?

A. A boxing ring in Glendale.

Q. Did he say how much that property was worth?

A. He told me that cost them \$125,000.

Q. Now, on February 24th, did you know whether or not he owed money to any other person?

A. No sir, no sir.

Q. Did you know whether he owed any money to any members [552] of the family?

A. Yes, he did. He didn't tell me if he owed them any money, but at that time I remember he said to me, because I am going to loan the next loan, I can't tell just the date when it was, about two or three days before I made the loan to them, he said, "Sam, you see, my sister has got lots of money in the bank and she is getting very little interest." I didn't answer him anything on that, you know, but he said, "I am not so hot to do business with my sister." I said, "Sol, I got lots of money right now on my hands; you owe me a few thousand dollars in I.O.U.'s and I got extra cash; I can let you have some money for less interest if you want to." He said, "How much less will you charge

(Testimony of Sam Kleinman.)

me?" I said, "I will give you some money at less interest, I will let you have money at seven per cent." So he said, "I will let you know." About a week or two weeks later, he came in my office and he said, "Sam, have you still got that money you say you can let me have at seven per cent?" I said, "Yes." He said, "If you make out the I.O.U.'s and give us the balance in cash, we will make you out a note."

Q. Is that the money that appears here at seven per cent?

A. Yes, exactly.

Q. Outside of Mrs. Harris, did you know that Zemansky Brothers owed money to any other person? [553]

A. I did not, but I always figure any legitimate business owes a little money here and there, you know, but I didn't know they owed anybody any big money.

Q. Do you know, Mr. Kleinman, whether or not Mr. Zemansky did loan any money from Mr. Zemansky's sister, Mrs. Harris? A. No, no.

Q. Outside of this discussion you had where he said his sister had money available for him, you didn't know if he loaned any other money?

A. No, I never even questioned him about it.

Q. From time to time, Mr. Kleinman, you loaned money to Zemanskys on I.O.U.'s?

A. Yes sir.

Q. This would amount to considerable sums, wouldn't it? A. Oh, yes.

(Testimony of Sam Kleinman.)

Q. On one or more occasions that would be \$15,000?

A. Yes, one morning I came in the office, one morning I came in the office, and Mr. Kravitz called me over. He said, "Sam, there is a nice loan to be made, a nice big loan, but I can't get hold of the boys; they must have left the house, and I can't keep that customer any longer." I said, "How much does she want on that loan"; he says, "She wants \$18,000, but I think we can cut that down to \$15,000; do you think it is worth \$15,000?" I took the three pieces in my office and examined them real close. [554]

I came back and I said, "Leo, you can let her have \$15,000, you can let her have \$18,000 if she wants it, I am not cutting it to 15, let her have \$18,000." Leon says, "We haven't got the \$15,000 cash to loan out." I said, "Leo, if that bothers you, I will give you the money." I went to my box and gave him \$15,000 to make the loan. So about two or three hours later, Sol Zemansky came up and Dave Zemansky came up and they told me about that deal, saying they were kind of worried about making a big loan like that, maybe I didn't know the value of the loan, so I had an appraisal made, sent it up to Mr. J. T. who I considered to be a real expert on merchandise, and he said that that one bracelet alone is worth \$18,000, and we made on the three pieces a loan of \$15,000. I made them give it to me in writing to show to the boys



(Testimony of Sam Kleinman.)

because they were worried very much about it. I brought it back to them and they were very well satisfied. [555]

Q. Mr. Kleinman, would you loan them other sums in large denominations, say, \$4,000 or \$5,000 on I.O.U.'s?

A. I gave them as high as \$10,000, \$5,000, \$3,000, \$2,000, \$1,000, all kinds of money, and the loan I made with the \$29,000 I got 10 per cent. They had very close to \$15,000 in I.O.U.'s.

The Referee: Just a minute. This wasn't an answer to the question. The question was, when was it that you gave [557] them money on I.O.U.'s, that's what we want to know.

A. Since I have been there.

Q. Did you give them money on I.O.U.'s after January 1, 1939? A. Yes sir.

Q. How many times?

A. I should say more than a dozen times.

Q. What is the largest single sum after January 1, 1939, do you remember?

A. The largest one, I believe, one time was a little over \$5,000, one time. [558]

Q. Over what period of time would that occur that they asked you for I.O.U.'s, during what years?

A. I believe that started up sometime—the I.O.U.'s started up sometime in 1936, until about the end of 1939. I gave them before 1936, but not so much, for a day or so and sent it right back.

Q. When you gave them I.O.U.'s, was the cash drawer empty?



(Testimony of Sam Kleinman.)

A. The cash drawer? I will tell you, they never kept much money in the cash drawer. They always kept \$20 bills, \$10 bills, \$5 bills, and \$1 bills. In other words, at times, if they had a lot of big bills, some people redeemed, like \$500 or a thousand dollars, lots of loans were around there like that, they used to keep it in the vault, and if they had one bill like that they used to keep it in the back of the cash drawer with a clip on it. I asked him once why they did that, and he said they once made a mistake and gave change back for a big bill instead of a small bill, and they did that so it wouldn't happen again.

Q. By the Referee: That was the reason?

A. That was what was told to me. [559]

Q. Do you know whether they would loan the full value of the diamonds or a lesser sum?

A. The full value in the loan department? Nobody gives a person the full value of the diamonds. They always loan less than its real value.

Q. Do you know how much less it would be?

A. Oh, sometimes they gave—it depends on the merchandise. If it is good merchandise they could give him as high as 75 per cent.

Q. But not good merchandise?

A. They would give him about 50.

Q. Then at all times the pawns that were taken in by a pawnbroker would be worth considerably more than the amount of money he had loaned out on this pawn?

A. The loan was considerably less.

(Testimony of Sam Kleinman.)

Q. Did you know that prior to February 24, 1939? Did you know before February 24th, when you entered into this contract, that the pawns that were taken in by Zemansky Brothers were worth considerably more than the loans they had made on them? A. Oh, yes, yes.

Q. Did you know what interest Zemansky Brothers were getting on those various pawns?

Mr. Laugharn: The contract is in writing and speaks [565] for itself. This would be hearsay.

The Referee: The question is whether he knew. It is overruled. Did you know what interest they were getting on those pledges? A. Yes.

Q. What interest were they getting?

Mr. Laugharn: May we have an objection to that question of the Court? The pawn agreements are in writing and are the best evidence instead of this man's interpretation of what the contract is.

The Referee: Well, you may make your objection.

Mr. Laugharn: I would like to make my objection.

The Referee: I will go over that question. Did you know what interest rates Zemanskys were getting on their pledges? Do you want to object to that?

Mr. Laugharn: No, the answer is yes to that, already.

The Witness: Yes sir.

Q. By the Referee: Now, what was your knowl-

(Testimony of Sam Kleinman.)

edge as to the interest rates they were getting, in other words, what did you believe they were getting?

Mr. Laugharn: For the record, I would like to have an objection to that on the ground that it is hearsay, that the contract itself is the best evidence.

The Referee: Overruled. What did you believe or know they were getting?

A. They were getting three per cent, and they had [566] another stamp they used, stamped on the back, "Minimum interest up to \$5 is 50 cents," and then they had a stamp where it showed two per cent for different amounts of money, and then they had another stamp that showed where they were getting three per cent.

Q. Three per cent on what amount?

A. Well, I wasn't in the loan department; I wouldn't know.

Q. I thought you said you knew.

A. I knew that because they paid it.

Q. What I am trying to find out, is what amounts of money they got the three per cent on.

A. I knew at that time when I was with them, but I have forgotten. I could think about it, in a few minutes I could recall.

Q. What loans did they get two per cent, if there were any such loans?      A. Over \$200.

Q. Over \$200 they got two per cent?

A. Yes.

The Referee: All right. Proceed.

(Testimony of Sam Kleinman.)

Q. By Mr. Wolver: You knew those facts, Mr. Kleinman, prior to February 24, 1939?

A. Did I know that?

Q. Did you know this before February 24, 1939?

A. Before, yes, yes, I knew they had those stamps. [567]

Q. After you went to work for them, they had a place at 558 South Main Street and one at Seventh and Hill?

A. Seventh and Hill, yes.

Q. As an employee, did you have the opportunity between 1935 and December, 1938, to go into their vaults? A. Yes.

Q. Did you notice the number of pledges they had on [568] hand?

A. Well, only a few times, I used to go in there.

Q. And did you also know how many of these pledges were not redeemed, the pledges forfeited?

A. I never looked at them.

Q. Did you know pledges were being forfeited?

A. Oh, yes, yes.

Q. Did you sell some of those forfeited pledges?

A. Hundreds of thousands of dollars of them.

[569]

Q. Did you ever have a conversation with them concerning the sales that you had made?

A. Oh, yes, they knew all the time.

Q. In this conversation was there anything ever said as to the profit or loss in the sales that you had made?



(Testimony of Sam Kleinman.)

A. Well, he told me one time that they had over a hundred thousand dollars, about a quarter million dollars worth of merchandise, to sell and they didn't sell any and they were glad they didn't, because they turned them over to me and I got better prices.

Mr. Wolver: You may take the witness.

Cross Examination

By Mr. Chotiner: [570]

The Referee: I will ask a question here.

Q. Are you testifying now, Mr. Kleinman, that in your private office in the Provident Loan Company, you had \$1500 in cash in a box in a drawer in your desk; is that your testimony?

A. Yes sir. [575]

Q. Who was present when you gave the \$2400 back to Mr. Zemansky?

A. Mr. Zemansky came back and I told him I would have the contract made out, you sign it and I will give it back.

Q. Which Zemansky was that?

A. Dave Zemansky.

Q. Was anyone else present when you gave him the \$2400? A. No sir.

Q. Do you know what he did with the \$2400?

A. No, he just took it, that's all; I don't know what he did with it. I know he put it in his pocket, put a rubber around it. [576]

Q. When was it that he asked you for the return of the \$2400?

(Testimony of Sam Kleinman.)

A. The same day that he gave it to me.

Q. Well, when he asked you the same day that he gave it to you, what did you tell him?

A. I told him I will make out a contract for you, but I haven't got a contract made out, but I have a copy that Mr. Dienstag left with me, which was spoiled, I wrote on it, it was spoiled, I couldn't use it for anything," and I said, "I will go upstairs to the stenographer in the same building and I will have her make me out another copy and I will have it back."

Q. In other words, you didn't give the \$2400 back to Dave Zemansky until the contract was prepared by you?

A. Until the contract was made and the pledges were put in the contract.

Q. But prior to this occasion, you had given money to the Zemanskys on just plain I.O.U.'s without a contract, didn't you?

A. Oh, yes, I would give them money, too; I would give them money if they wanted it, on an I.O.U., but he offered it to me.

Q. He offered what to you?

A. He offered to give me pledges for that money.

Q. You decided then that you would give him the money when the contract was signed and the pledges were [577] set aside?

A. When he came in and asked me for that money over again, he said, "Sam, now, it don't have

(Testimony of Sam Kleinman.)

to be today or tomorrow, have the contract made and everything put in first class shape, and I will come in, you give it to me and I will sign it up.”

Q. That is all that was said?

A. That is all.

Q. Then it took two days for the contract to be ready, is that right?

A. Well, I had it done the same afternoon. I had the contract written up the same day upstairs, and then they picked out the pledges and they gave me a list of the numbers of the pledges and put the numbers of the pledges on a piece of paper and fastened it onto the contract like we did all of them, most of them.

Q. That was two days after Dave Zemansky gave you the \$2400?

A. Yes sir.

Q. As a matter of fact, Dave Zemansky told you at the time he gave you the \$2400 that he would like to borrow it back again, didn't he?

A. The same day, later on, around that afternoon.

Q. Around the afternoon?

A. Yes.

Q. Where was it that he asked you for the return of [578] the \$2400?

A. In the same place.

Q. At the Provident?

A. At the Provident.

Q. Where was it that he gave you the \$2400?

A. At the Provident. [579]

Q. By Mr. Chotiner: So we will have it clear,

(Testimony of Sam Kleinman.)

directing your attention to March 1st, which is the night when the security was given for the Simon account, after that time did you loan money to the Zemanskys on I.O.U.'s?

A. After that time? [580]

Q. Yes. A. After that time, yes.

Q. What was the total amount of money that you ever loaned them after March 1st on I.O.U.'s?

A. I gave them different amounts; I gave them different amounts, sometimes \$500 sometimes \$1,000, sometimes \$1200.

Q. What was the highest amount you ever gave them after March 1st?

A. About \$1200. [581]

Q. Now, on direct examination, you testified that you knew and had talked with Sol Zemansky about the properties that the Zemansky Brothers owned?

A. Yes.

Q. Now, which properties did you ever discuss with him in 1938, if any?

A. In 1938?

Q. Yes.

A. He was talking to me about the Glendale property.

Q. About the Glendale property. When he talked to you about the Glendale property, he told you that they had paid \$125,000 for it, isn't that right?

A. I knew that before.

Q. You also knew that there was some miniature golf course on that property?

A. They had a miniature golf course.



(Testimony of Sam Kleinman.)

Q. You also knew in 1938 that the taxes had not been paid on that property?

A. I certainly did not.

Q. But you knew some of those other places that you mentioned on direct examination were closed in 1938, didn't you?

A. Some of them were open and some of them were closed. [582]

Q. When redemptions were made of pledges that had been set aside for you for security, and new loans or new pledges were made with the money, were those pledges kept separate from the pledges that were made with other money from the cash drawer?

A. They kept the pledges that they had before.

Q. Mr. Kleinman, I will ask you if you understood my question. A. No.

Q. I will try it again, maybe it is my fault. When money would be received from customers on account of redemptions of pledges that had been set aside to you for security, and then that money would be used and new pledges would be taken in, would those new pledges be kept separate from pledges that they took in from other money?

A. Other money besides my money.

Q. Yes.

A. Well, that was promised to me, all pledges coming in. Do I know if they did that?

Q. Yes.

A. Well, they were supposed to keep them.

[585]

(Testimony of Sam Kleinman.)

Q. Do you know whether they did or didn't?

A. I didn't go in the safe to look.

Q. In other words, you don't know whether they kept them separate or not?

A. They kept them ready to pledge to me if I wanted them.

Q. Then I take it, Mr. Kleinman, you don't know whether they kept them separate or not, do you?

A. Well, I never went into the safe; I couldn't tell, never went into the safe. I seen they had them down there for me. Every time I called for them I got them.

Q. After January 1, 1939, you sold jewelry for Zemansky Brothers, is that right?

A. After January?

Q. Yes.           A. From January on.

Q. I am talking about January, 1939; did you ever sell jewelry after that?

A. Oh, yes, sure.

Q. Were you permitted to keep any money in excess of [586] any price you would receive from the sale of the jewelry?           A. Yes sir.

Q. What arrangement did you have with the Zemanskys as to what money you could keep from the sale of the jewelry?

A. Zemansky told me one day, around about March, of course, the bills will tell just exactly what day it was. He had called up Dave Zemansky to send him down a big sum of money; he said he needed at that time around about \$20,000 in a hurry;

(Testimony of Sam Kleinman.)

he said, "Give Sam Kleinman merchandise to sell." He told me that after he gave me that merchandise to sell, that's the time he told me after I took that merchandise out, that's the story he gave me, after I took the merchandise out to sell. So Dave told him "I can't give Kleinman that much merchandise to sell right away, you know it sells, better take that merchandise out to Morrison and borrow money on it." He told me that when he told me to take the merchandise out to Morrison. I took out close to around about \$18,000. So I said, "Why didn't you get me to sell that merchandise, maybe I could have gotten a better price." He said, "You know I can't fight with my brother, if he wants me to do that; I told him to go ahead and hurry up and get me the money," and so he got him the money on it. He said "There's no use leaving that merchandise laying around with Morrison and paying him interest; can't you handle that deal, you [587] know, I have been busy going up and down the coast; can you handle that deal for me?" I said, "Sure, I will handle the deal for you." He said "You will have to have about \$10,000 first to take one package out. Is there any way you can get that money and handle it without us giving any money to him;" they hesitated letting out any money. I said "Sure I can, I can handle that very easy." So I went up to a broker by the name of Joe Heller. I didn't tell him where the merchandise, where it might be, I just told him "If you will give me \$10,000, I will redeem a certain amount of merchandise which I will give you the privilege to



(Testimony of Sam Kleinman.)

buy, and another thing, you don't have to buy it if you don't want to. We will give you a note for six per cent", he says, "seven per cent, six or seven per cent." He said, "Well, I will tell you, I haven't got any \$10,000 of my own money right now, but I got a friend who will go in the deal; in other words, if he don't want to buy, he don't have to; you give us a note for thirty days." So he went out and called, he went back in his office and called up a friend of his.

Q. Who did?

A. Joe Heller. And he called me back later. He said, Mr. Kleinman, I got a party who is interested; he will do just what we talked about; he will give you \$10,000." He said "We will give him back the \$10,000.00." I said, "That's good, that's fair"; so I made out a note, and the [588] other party didn't know the Zemanskys very well, didn't know them very well, never done business with them, never done business, it was the first time he done that. He said "Joe, if I do anything like that, I don't know the Zemanskys, who they are, what they are, I don't know, if you want \$10,000 to do business with, take me in as a partner, I will loan you \$10,000 and give me a note. You can do with my check as you want to, but I want you and Sam Kleinman to sign it." I said "I will do better than that; I will make Sol Zemansky sign it, so you have three, one of them might be good." I explained that to Sol Zemansky and Sol Zemansky said "Sure, anything you want,



(Testimony of Sam Kleinman.)

anything you do, that was all right"; and I made out the note and had Sol Zemansky sign it and Joe Heller sign it and I signed it, and we gave that man that note for the \$10,000, I can't think of that man's name, Joe Heller's friend; the first time I ever done business in my life with him. He endorsed that check over in Long Beach and I gave it to Sol Zemansky and Sol Zemansky took the check from me to get back the diamonds from Mr. Morrison.

Q. When was that that this happened?

A. I told you that a minute ago, I can't remember the date exactly.

Q. Was it before you got your security or after?

A. After.

Q. Did Dave tell you why he needed the money?

[589]

A. No sir.

Q. Did you ask him?

A. No sir. [590]

Q. Did the Zemanskys, any of them, tell you about the transaction with Morrison, as to how they happened to have jewelry with Morrison?

A. I told you before.

Q. Who told you about that?

A. Sol Zemansky.

Q. Sol Zemansky told you they needed money, that they could not wait for you to sell it, so they took that jewelry to Morrison and borrowed money on it?

A. Yes sir.

(Testimony of Sam Kleinman.)

Q. Sol Zemansky told you the reason they did that, they needed money in a hurry in the business, is that [592] right?

A. Yes, he was out of town and he needed the money some place.

Q. Did he tell you why they needed the money in such a hurry?

A. No, I never questioned them; they always needed money.

Q. During the time that you were loaning money to Zemanskys, did you keep any record of the money that you were loaning to them?

A. Book records?

Q. Any kind of a record on a piece of paper, or anything?

A. No; I.O.U.'s, I got.

Q. In other words, you never kept a sheet of paper on which you listed any of those payments, is that right?

A. No, never.

Q. Whatever I.O.U.'s were repaid by the Zemanskys, you would return the I.O.U.'s to the Zemanskys, is that right?

A. Yes sir.

Q. Then you wouldn't have any record as to the transactions with Zemanskys? [593]

A. Only the promissory note.

Q. Just the promissory note?

A. Yes sir.

Q. Did you ever keep a book in your office up there at the Provident showing the sales of jewelry that you made?

A. Absolutely.

Q. You did keep a record there?

(Testimony of Sam Kleinman.)

A. Of the jewelry I sold for the Zemanskys, yes sir.

Q. What record did you keep of them?

A. The bills, when I used to sell jewelry.

Q. In other words, those were the regular sales books?      A. Sales books.

Q. Did you ever keep a record as to the amount of interest that you received from Zemansky Brothers?      A. Never.

Q. In other words, you never kept a list any place as to the checks that you got from Zemanskys on interest?      A. No sir.

Q. Did you deposit in your bank account all of interest checks that you received from the Zemanskys?

A. Sometimes I went to the bank and cashed it and sometimes I deposited it.

Q. Did you keep a record any place as to the checks that you did not deposit but merely kept the money?      A. No sir. [594]

Q. Did you ever keep a record any place, Mr. Kleinman, of the principal amount of money that was ever paid to you by Zemanskys?

A. Principal?

Q. Yes.      A. No, I never did, no.

Mr. Chotiner: I think that is all, your Honor.

The Referee: Mr. Zemansky, how did you make up an income tax return?

A. I done business with three people, three people.

(Testimony of Sam Kleinman.)

Q. When it came time to make up your income tax return, for the year 1939, where did you go to find out how much interest you had received in the year 1939?

A. Zemansky Brothers gave me a list.

Q. Zemansky Brothers? A. Yes.

Q. Zemansky Brothers were out of business in March of 1940. When you had to make out your income tax return for 1939, when you made up your income tax return for the year 1939, which you made up between January 1st and March 15 of 1940, unless you've got any since that time, where did you go to find out how much interest you had received? A. I knew that.

Q. What?

A. I knew what I had received.

Q. You mean, you just put it down from memory? [595]

A. Yes, only a couple of months, only a few months.

Q. Zemanskys did not close up until July 10th, 1939? A. Yes.

Q. You mean to say you made out your income tax return in so far as it related to the interest from Zemanskys, from memory, is that right?

A. Well, I knew I got one check for \$800 in interest, and I knew I got \$2400 interest, and I knew I had so many weeks' salary.

Q. I am not talking about your salary; I am talking about interest.



(Testimony of Sam Kleinman.)

A. Interest, I only had two payments of interest.

Q. The \$800 you got in the month of March?

A. Yes sir.

Q. What about interest in January and February of 1939?

A. January, I can't really figure that out. I will tell you how it was, you mean the income tax return for 1939. Well, 1939, I figured out so many months at so much interest.

Q. In other words, the answer is, you made out your income tax return from memory?

A. From memory, yes. [596]

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SAM KLEINMAN

recalled for

Redirect Examination [598]

By Mr. Wolver:

Q. Mr. Kleinman, you told Mr.—let me ask you this: After you returned from San Francisco and the contract of March 1st was signed, did you go into the vault of Zemansky Brothers?

A. After my contract was signed?

Q. Yes. A. With Zemansky?

Mr. Chotiner: I object on the ground that it has been asked and answered.

The Referee: Overruled.

A. Do I have to answer?

The Referee: Yes. A. No sir.

(Testimony of Sam Kleinman.)

Mr. Wolver: Q. Can you tell the Court why you didn't go into the vault after that time?

A. Well, before that, all the time before that, when the girls were gone out to lunch, they used to ask me, "Sam, get this out," and I used to go to the box and look around the pledges. One of the boys, like Leo Kravitz, used to ask, "Why does it take you so long?" I said, "Why, I am not acquainted around here"; it took me so long to get a pledge out. After I got the pledge out, I used to ask someone to figure the interest for me, to deliver the pledge to a customer. He used to say "You are more of a nuisance than a help." I said, "I am not [606] supposed to do that; I am just to help you out as much as I can."

Q. Well, now, why didn't you go into the boxes after March 1st?

A. After March 1st the merchandise was so differently arranged, and Mr. Leo Kravitz told me, he said, "Sam, you didn't know how to handle it before, we had a lot of trouble with picking out the stuff before to deliver to a customer; you can't do it now, you better not go in there; leave that for us to do."

Q. So you didn't go in there?

A. So I didn't go into it.

Q. Did you at any time after that return any pledges to a customer for exemption?

A. Did I what?

Q. After March 1st, did you ever give back any pledges to any customer for redemption?

(Testimony of Sam Kleinman.)

A. Once in a while, if I was behind, when one of the boys went out to lunch, Leo used to check them off the stub, put on the back of the stub the amount of interest that was due. He used to say, "Will you please give this to the gentleman or lady, I want to deliver it," and I knew exactly just what to do. It was already written down on the stub on the back. [607]

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DAVE ZEMANSKY,

recalled as a witness in rebuttal on behalf of the Trustee, having been previously sworn, testified as follows:

Direct Examination

By Mr. Chotiner:

Q. Directing your attention now to the note and contract dated July 5, 1939, in the sum of \$2400; you now know what note and contract I am referring to?           A. No sir.

Q. Do you remember the last note and contract that was executed for \$2400?

A. No sir. I have seen these many different notes, but, to be sure, could I see the note.

Q. In the month of July, 1939, did you pay the sum of \$2400 to Mr. Kleinman in cash?

A. No sir.

Q. Now, directing your attention to the date that the petition was filed by Zemansky Brothers on July 10th, 1939, now, bearing that date in mind,

(Testimony of Dave Zemansky.)

do you recall the last contract that you signed for Mr. Kleinman and the last promissory note for \$2400? [611]

A. If I could see the note.

The Referee: We don't have apparently the original here. Do you have the original? Perhaps seeing the signature will refresh his recollection. Is it stipulated that the witness may be questioned on the original of the contract and the note of July 5, 1939, without their being offered in evidence, copies already being in evidence?

Mr. Dienstag: I think it has been stipulated that copies are in evidence, as being true and correct copies of the originals.

The Referee: May he be questioned on the original without the original being put in? Any objection?

(No objection). So ordered.

(Question read).

A. Yes sir.

Mr. Chotiner: Q. What was that note and contract executed in payment of, do you know?

A. Well, I'll tell you, if you remember—if I might tell it in my own words—I testified previously on that three months' interest of the \$100,000, where the new contract was made, it was put into a note. I was under the impression it would be a note where the other pledges were put in. Now, I signed quite a few \$5,000 notes. Now,



(Testimony of Dave Zemansky.)

evidently, this is three months' interest at \$800 a month.

Q. Prior to executing that note and contract, did you [612] give Mr. Kleinman twenty-four one hundred dollar bills?           A. No sir.

Q. Did Mr. Kleinman give you twenty-four one *hundred bills* at the time that you executed that note and contract?           A. No sir.

Q. Did you tell Mr. Kleinman that you needed \$2400 at the time you executed that contract and for him to give you back the \$2400?

A. No sir. [613]

Q. Now, Mr. Zemansky, what was done with the pledges that would be taken in from day to day up at the Provident Loan Association, as far as the place where they were kept in the vault?

A. They were put in shoe boxes and also envelope bags they had, envelope bags, and they were put in those bags by the day, the day's business in one of those bags, and then in that vault there are some aprons halfway down the vault, steel aprons; you can pull them out and re-set them on those aprons.

Q. Was that system followed before Mr. Kleinman obtained his security?           A. Yes sir.

Q. Was the same system followed after he obtained his [614] security?           A. Yes sir.

Q. What was the reason for putting the pledges in the shoe boxes?

A. Well, we would leave them there a day or

(Testimony of Dave Zemansky.)

two and then we would sort them by numbers and put them away in rotation.

Q. Was that same system followed, and was that the same reason that you used to put them in shoe boxes before the security was given to Mr. Kleinman? A. Yes sir.

Q. Was that the same reason that system was followed after you gave security to Mr. Kleinman?

A. Yes sir. [615]

Q. Mr. Zemansky, did you have any conversation with Mr. Kleinman after the security had been given to Mr. Simon regarding the condition of the Simon account? A. Yes sir.

Q. Where did this conversation take place?

A. Over at the Main Street store.

Q. And when?

A. Well, it was different times after we entered into the new contract with the Simons' Dairy Lunch.

Q. Did any of those conversations take place before the Simons' security was set aside for them?

A. No sir, I don't think so.

Q. What were the conversations that you had with Mr. Kleinman regarding that subject?

Mr. Dienstag: May we know if anyone else was present?

Mr. Chotiner: Q. Was anyone else present?

A. No sir.

Q. What were the conversations?

A. I used to be in the Main Street store in

(Testimony of Dave Zemansky.)

the evening. We were running an auction and I have to get things ready for the next day, and along about 8:00 P.M. or so, around that time, Mr. Kleinman came in at different times and he told me he had dinner at Mike Lyman's restaurant, [617] Mike Lyman's cafe, and he said he spoke to Bill and Bill was in a very bad frame of mind because I hadn't sent him nothing on account. Later I sent a check.

Q. To whom did you send the check?

A. I mailed the check to Simons' Dairy Lunch. Mr. Kleinman suggested I write some smaller checks and he would take them over and give them to Mr. Simon.

Q. Did you make out smaller checks and give them to Mr. Kleinman?      A. Yes sir.

Q. What did Mr. Kleinman say he was going to do with them, if anything?

A. He would take them over there. He wanted to be sure I was making them out five days apart, to be deposited five days apart.

The Referee: What does the record show as to when that conversation was had between Mr. Kleinman and Mr. Zemansky, in which Mr. Kleinman said Lyman was dissatisfied with the way he was getting his money, prior to the Simons' attachment?

Mr. Chotiner: That is correct.

Q. Mr. Zemansky, do you know whether or not Mr. Kleinman ever paid any money to the Simons

(Testimony of Dave Zemansky.)

people on account of the money that was owing to them by the Zemanskys?

A. I believe he did several times.

Q. And do you recall how much that was? [618]

A. No, I don't know exactly but several times he paid them.

Q. Did you ask him to do that?

A. Why, he asked me if I had the money to pay them. I told him no. I said, "Sam, maybe you could pay them and then we would pay it back to you."

Q. What were the circumstances of his paying that money to Simons on account of Zemansky Brothers obligations, how did that happen? When you said you couldn't pay them, what did you mean by that, Mr. Zemansky?

A. William Simon called me up several times. He threatened to attach the place.

Mr. Miller: I move that that be stricken on the ground that it is hearsay.

The Referee: Yes, that may go out.

Mr. Chotiner: Q. Did you have a conversation with Mr. Simon?

A. Yes, several different times.

Q. Can you tell us what Mr. Simon told you—did you tell Mr. Kleinman about your conversation with Mr. Simon? A. Yes sir.

Q. What did you tell Mr. Kleinman?

A. I told him Mr. Simon called up and he insisted on having some money.



(Testimony of Dave Zemansky.)

The Referee: One second, please—proceed.

Mr. Chotiner: Q. What else did you say, if anything? [619]

A. I told him we didn't have it to send.

Q. What did Mr. Kleinman say then?

A. Well, he wanted to know what we were going to do about it.

Q. Will you go ahead and tell us the conversation that took place between yourselves?

A. I said, "Maybe you could pay him a little on account, then we would pay it back to you."

Q. Was that an occasion then when Mr. Kleinman paid some of the money to Simon on account of the obligation? A. Yes sir.

Q. Do you recall what month that was, whether it was in April or any other month?

A. Well, that would be after the new contracts.

Q. About how long after the new Simon contract was it?

A. After the first two months we were able to keep up the interest, so it was after that.

Q. In the first two months and earlier, you were able to make your payment to Simon, is that right? A. Yes.

Q. Then it was shortly after that, is that correct?

A. I might explain the reason for that. You see, the money we were having from redemptions we were depositing in the bank, so we would have no occasion to use that money, but when the last

(Testimony of Dave Zemansky.)

pledge contract with Mr. Kleinman was made, we used that money over for new loans, so that gave [620] us a little money over the new loans.

Q. Did Mr. Kleinman tell you why he would make payments for you? A. No sir.

Q. Did you pay Mr. Kleinman for the money that he had advanced to Simons?

A. I don't think so; I think that is part of the I.O.U.'s that we signed at different times.

Mr. Chotiner: That is all.

### Cross Examination [621]

By Mr. Dienstag:

Q. Approximately how much, Mr. Zemansky, did the sales of jewelry by auction amount to in 1939 at 558 South Main Street—well, the records show, if your Honor please. This is a Namson and Young report. [623]

The Witness: It was an unusual amount. I can tell regardless of the records; it was an unusual amount. We ran auctions six days a week, used to take in about \$200, as much as \$300 a day.

The Referee: Q. How long did you run these auctions?

A. Right up to the time of the attachment.

Q. In 1939, every week day?

A. Up to the time of the attachment, every week day, six days a week, so someone can figure that out, although we did have a record of the sales. I don't know who has it, Mr. Holdrege or—

[624]

(Testimony of Dave Zemansky.)

Mr. Dienstag: Q. You have said that the money which was received from Kleinman's redemptions or, you used the term, you got some money *out them*; by that, did you mean you were able to re-loan that out on new pledges?

A. Yes.

Q. So that you used the money to loan out on new pledges? A. Yes sir.

Q. That is correct, is it? A. Yes sir.

Q. And all pledges that came in, Mr. Zemansky, were kept in these boxes, these cardboard boxes?

A. Yes.

Q. Now, do you recall, Mr. Zemansky, how much cash you had on hand at the Provident and at 558 Main Street at the time that the Sheriff came in approximately the 8th day of July?

A. Yes, I think the Sheriff gave me a receipt at that time for two hundred and some odd dollars.

Q. That was on the 8th? A. Yes. [625]

Q. Was there jewelry redeemed at 558 South Main Street in the same fashion as it was at the Provident, people came in and redeemed their jewelry? A. Yes sir.

Q. You were also conducting an auction there, where you took in anywhere from one hundred to two hundred dollars a day?

A. Yes sir, probably a little more some days.

Q. A little more some days?

A. Yes, but most of the days we considered anything over \$100 good.

(Testimony of Dave Zemansky.)

Q. That was true of the 5th day of July, the 6th day of July, the 7th day of July, the 8th day of July, all those days until the Sheriff came in?

A. Up to the time that the Sheriff came.

Q. Do you know how much money you took in at the Provident Loan—I will withdraw that. Mr. Zemansky, you from time to time would borrow money from Mr. Kleinman on I.O.U.'s, I think you so testified?

A. Yes sir.

Q. And Sam would hand you the cash, wouldn't he?

A. Yes sir.

Q. And he would take it out of his desk?

A. Yes sir.

Q. He would take it out of what you might call a strong box? [626]

A. I believe he had an iron box in the desk, but he also had a desk lock. The desk was locked.

Q. What I am getting at, he did take money out of that iron box and he would let you have it?

A. Yes sir.

Q. They were substantial sums sometimes?

A. As a rule, he always used to give us \$100 bills.

Q. You would get five hundred or a thousand dollars from him?

A. Yes, then he would hand me as a rule one hundred dollar bills.

Q. In substantial sums? A. Yes. [627]

Q. On those occasions when you asked Mr. Kleinman for a loan of money, did you have any diffi-



(Testimony of Dave Zemansky.)

culty, experience any difficulty in getting such a loan?      A. No sir.

Q. As a matter of fact, it was handled very casually, [630] wasn't it?

A. Yes sir; sometimes he would send it down with the colored porter we had up there.

Q. Whenever you were in need of money you would call Mr. Kleinman because you knew that he had been loaning you money and would do so?

A. Yes, and Mr. Kravitz would speak to Mr. Kleinman.

Q. You have testified once before on the stand, I believe, that beginning about the middle of 1936 you had these I.O.U. transactions?      A. Yes.

Q. From that time on, there would never be any difference when you put in a call for money?

A. No sir.

Q. He would give it to you, he would get the money out of the cash box that he had in his own desk?

A. Yes, and then we made it into the \$5,000 notes. [631]

By the Referee:

Q. Now, on that same point, calling your attention to the day when Simons actually attached, do you now recall that you had any conversation with Mr. Kleinman before that date, in which you mentioned the Simons' transaction?      A. No.

Q. You don't remember any such conversation?

[635]

A. No. [636]

## ISAAC PACT,

called as a witness on behalf of the Claimant, being first duly sworn, testified as follows:

The Referee: Your name is Isaac Pacht?

The Witness: That is right.

## Direct Examination

By Mr. Wolver:

Q. What is your trade, business or occupation?

A. I am an attorney-at-law.

Q. Judge Pacht, were you present at a conversation had on or about the 28th day of February—on or about March 1st, at your office, at which Mr. Kleinman, Mr. Dienstag, Mr. Sol Zemansky and Mr. Lyman and Mr. Simon were present? [649]

A. I was.

Q. Do you recall about what time of day or night that was?

A. I think it was from about 8:00 o'clock until midnight.

Q. Did any part of that conversation pertain to the solvency or insolvency of Zemansky Brothers or Sol Zemansky? A. Yes.

Q. Did it pertain to Sol Zemansky or Zemansky Brothers? A. Zemansky Brothers?

Q. Do you recall that conversation in that regard, Judge Pacht? A. Yes.

Q. What was it?

A. It was substantially a continuation of a conversation or conversations that I had had with Mr. Sol Zemansky and with my client, in regard to giv-

(Testimony of Isaac Pacht.)

ing them an extension of the notes which they originally held and a reduction in the rate of interest. In substance, the conversation was this: In behalf of our client, Simons' Lunch Rooms, Incorporated, we had levied an attachment on the place of business of Zemansky Brothers. There had been efforts made to release the attachment and make some kind of a deal whereby Zemanskys would pay part of their obligation down and arrange for making payments thereafter [650] in installments. I think Mr. Dienstag said that in some transaction that he had had in San Francisco, covering a similar situation, arrangements had been made whereby the debtor, who was a pawnbroker, would pledge as collateral what would be owed on the notes from the pledgors as collateral for the pawnbroker's indebtedness. He thought that a similar arrangement could be made with my client so as to have a duration of the attachment. I stated in substance, "Now, what's the use of prolonging this? If you are bankrupt"—addressing myself to Zemansky, "If you are bankrupt, if you are insolvent, let's know about it now and if my clients have to take a loss on this thing, they will take it and get it over with. If you can't pay your debts in full, tell us so and we will know where to go from there. It is not the first time that a creditor has had to write off an obligation in whole or in part." Mr. Zemansky, Sol Zemansky, who did the talking, as I have no personal recollection as to whether

(Testimony of Isaac Pacht.)

one of his other brothers was there or not, I think one of his other brothers was there, said in substance that they were solvent, that they had more assets than liabilities, enough to cover all their liabilities, but they were hard-pressed for ready cash, and if we would give them the time they would pay out. Now, that is in substance what Sol said.

Q. Was Mr. Kleinman there at that time that this was [651] said?           A. Yes.

Mr. Wolver: Your witness, Mr. Chotiner.

Mr. Chotiner: No cross examination.

The Referee: All right; thank you, Judge Pacht.

Mr. Wolver: May it please the Court, we have two other witnesses who were present at that conversation, and who can testify to the same thing. May we have a stipulation, if Messrs. Simon and Lyman were called, they would testify substantially the same as Judge Pacht, as to the conversation?

Mr. Chotiner: So stipulated. [652]

Mr. Laugharn: As a starting point, I think from the Trustee's position we concede the gross amount of the claim; in other words, before the hearings we had a question with respect to the \$1100 amount, with respect to the \$1200 amount, the \$1,000 and the \$3,750, and the I.O.U.'s held by Mr. Kleinman. Now, we feel that our position with respect to the \$1200 item has been cleared up and the claimant has shown that item. We feel the claim-



(Testimony of Isaac Pacht.)

ant has shown the item of May 13th of \$1,000. We have no further evidence in connection with the \$3,750 of June 2nd, other than what has been introduced, and we have no further evidence to show that there is no [655] consideration supporting it. I think the testimony is that it was for I.O. U.'s——

Mr. Wolver: And cash. [656]

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EDWARD DIENSTAG,

called as a witness on behalf of the claimant, having been first duly sworn, testified as follows:

The Referee: Your name?

The Witness: Edward Dienstag?

Direct Examination

By Mr. Wolver:

Q. Mr. Dienstag, when did you first discuss with any of the Zemanskys the question of loans owed by the Zemanskys, or notes owed by Zemanskys to Mr. Kleinman?

A. The middle of February of 1939, about the 10th or 11th or 12th.

Q. Now, Mr. Dienstag, will you tell us who was present, where it occurred and give us the conversation in substance or in words?

A. The conversation took place at the Provident Loan Association in Los Angeles at 706 South Hill Street. There were present Mr. Sol Zemansky, Mr. Sam Kleinman and myself. Mr. Sol Zemansky

(Testimony of Edward Dienstag.)

came in the office where Mr. Kleinman and I already were, and after greeting one and another by saying hello, I said to Mr. Sol Zemansky, "Sol, Sam tells me that he has about \$100,000 with your firm." I said "I have advised him to have that sum secured. Sam tells me that he is not working for you any more and that he is going to take a long vacation." I said "Sam told [700] me that he had already talked to you and you said you would give him security. What kind of security have you to give Mr. Kleinman." Sol said, "Well, Ed, as you know, we have various enterprises throughout the State. We have quite a bit of money invested and we haven't much ready cash. What ready cash we have we can use in our Loan Department here. However, we have several hundred thousand dollars worth of pledges." I said, "That sounds all right to me; why can't we have the pledges?" Sol said, "You can, but I want to call your attention to one thing." He left the room and came back shortly thereafter with a copy of a pledge ticket, which bore on the face, I think, Provident Loan Association. He said "Read this printing on the back. That is the Pawnbroker's Act." He said, "There is some provision in there about not giving up the possession of these pledges," but he said "I don't think it really means that, because I had my attorney, Charley Lyons, the assemblyman, work on this bill" and he said "I never intended it should mean that a pawnbroker should not be able to re-

(Testimony of Edward Dienstag.)

pledge his pledges because that was one of our sources of getting in money," but he said "It may mean that." I looked it over and said, "Well, I could not tell very much about those things; I will look up the law on the subject." I said, "If it can be arranged and you can give Sam this security, all right." He said, "I will be glad to; I have already told Sam I would." I [701] said "Well, I will take this with me, Sol, and I will look it over and see what I can discover about it."

Q. Did he ask you to do anything with this instrument that he gave to you, Mr. Dienstag?

A. Well, not with that one, but later that day I was down at 558 Main Street, looking to see whether they had on the premises a moving-picture camera which I could buy. Sol came in and he gave me a copy of the Main Street pledge ticket and showed me some wording on the back of that ticket. I said, "Sol, I would like to take this along with me." He said "If you are going to take that one, Ed, you may take it," and I took it with me.

Q. Did you return to San Francisco after that?

A. Yes sir, I did.

Q. While in San Francisco, did you examine the law?           A. I did.

Q. Did you subsequently return to Los Angeles?

A. Yes.

Q. About when did you return to Los Angeles?

A. I returned to Los Angeles either the 16th or 17th of February. I was in Los Angeles on the 17th of February, which is my birthday.



(Testimony of Edward Dienstag.)

Q. Do you recall if you had a conversation with Mr. Zemansky upon your return to Los Angeles?

A. Yes, I did.

Q. Which Mr. Zemansky? [702]

A. Mr. Sol Zemansky.

Q. Tell us approximately when and where it occurred, and will you give us the substance or words of the conversation?

The Referee: Was Mr. Kleinman there at this second conversation?

A. Yes, your Honor. That conversation took place in the office of the Provident Loan Association, in the office occupied by Mr. Sam Kleinman as his office. Mr. Sol Zemansky was there. I had with me notes on the subject of the law regarding pawnbrokers' pledges and the re-pledging by pawnbrokers of their pledges and the subject of assignment of accounts receivable. I said to Mr. Sol Zemansky, "Sol, I have got this problem worked out." I said, "I believe under the law, under this Pawnbrokers' Act, which I have looked into, that you cannot give the pledges which contain the jewelry that you have taken from customers to anyone as security, you cannot give up possession without violating that law and committing a misdemeanor. However," I said, "these pledge tickets that you give to the customers constitute a promise on the part of these people to pay you certain sums of money." I said, "You can assign your right to receive this money." I said, "That is a very com-



(Testimony of Edward Dienstag.)

mon procedure and it is done all the time and such things are given as security to various finance companies." I then told him that so far as the [703] actual law on the subject was concerned, I could only find three cases in the entire United States of the exact question of giving up the possession of pledges where a statute existed which would permit it. I then had with me notes of the proposed agreement which we finally entered into and read them to him with regard to the various provisions. Sol said, "Ed that seems like the ticket to me; I think that will be all right. Will you prepare the agreement?" I said, "Yes, I will, Sol."\*\*\* [704] "All right, Sol, I will complete this entire contract ready for you to sign, but in order to do so I have to have the numbers of the pawn-tickets and the pledges so that I can type them and put them in the contract." I said, "I am in a hurry to get out of here, I have got to [706] get back to San Francisco. How soon can you get those numbers?" Sol said, "That's easy," and he walked to the door and called for Leo Kravitz. Leo came in and he said, "Leo, I would like you to pull out about \$100,000 worth of pledges for Sam. Will you do that?" Leo said he would and he said, "Shall I do that alone?" Sol said, "No, you better have Sego." Sol turned to me and said, "Will that be all right?" and I said, "Yes, I think I will come up here and help them get this over with." Then I said, "Leo, how

(Testimony of Edward Dienstag.)

about having dinner together and we will come back later." Leo said that will be all right.

Q. Do you recall when the pledges were actually taken, Mr. Dienstag, the date?

A. Yes, that was on February 20th, the evening of February 20th, after dinner; rather, it was about 7:30.

Mr. Chotiner: Will you clarify what you mean by "taken"; you don't mean they were taken off the premises?

Mr. Wolver: No, when they were segregated.  
[707]

Q. Will you describe for the benefit of counsel and the Court the operations that occurred that night in the segregation of the pledges?

The Referee: May I ask again for the date when that happened?

A. The segregation of the pledges, February 20th.

The Referee: 1939?

A. Yes, your Honor.

The Referee: All right, go ahead.

A. On that evening we returned to the Provident Loan Association. Mr. Kravitz opened the vault, which had been closed apparently, and brought out of the vault two steel boxes containing little envelopes which had on them a serial number and a certain amount of money varying from \$50 to \$300 on each particular envelope. These envelopes were standing on edge, supporting each

(Testimony of Edward Dienstag.)

of the other envelopes in front and back, with a number on the top of the envelope. Leo brought those in to an office occupied during the day time by Miss Brown, secretary for Mr. Joseph Zeman-sky; he had an office there, and in which [708] office there was an adding machine. We took turns —by “we” I mean myself, Leo Kravitz and Sego —in reading the numbers of the pledges, on the pledge bags, and the amounts, and one or the other of us would then run the amount off; as the numbers were read, the amounts were read on the adding machine at the same time and I personally also would write down those numbers on a large yellow work-sheet. As we finished a box in that fashion, we would total up the amount of the pledges in that box on the adding machine. Mr. Kravitz kept bringing out more boxes until the last box was handled, and there were about \$107,000 worth of pledges selected.

(A short interruption on another matter).

The Referee: Now, Mr. Dienstag, you can carry on with your answer.

The Witness: After we had reached that point of \$107,000, we stopped selecting and segregating the pledges, and Mr. Leo Kravitz, under my direction, marked a “K” beside a serial number appearing on the face of each of those steel boxes. They were marked “K-1” “K-2”, “K-3” and so forth, on each one of the boxes, and I am under the im-



(Testimony of Edward Dienstag.)

pression that there were at that time about eight or nine such boxes. There was then cleared out of the vault safe a line of steel drawers on the right side, the steel drawers facing the back of the safe from the door. [709] In the place so cleared, these boxes containing the pledges so segregated and listed were put one below the other so that they were in consecutive order in one row. I then took the yellow sheets containing the numbers of the pledges and the amount appearing on the envelopes.

Mr. Wolver: Q. Was anything done with those sheets, Mr. Dienstag? A. Yes.

Q. Do you recall what was done?

A. A copy of those sheets was made, that is, I mean in writing, and was given to Mr. Abe Zeman sky by me with directions to take out of the regular books, bound books, of pawn-tickets, the pawn-tickets corresponding to those numbers, placing them in order and to put them in separate books. The other copy, that is, the original copy made that night, I took to my office in Los Angeles and directed the secretary to type them on legal-sized sheets and to list them as Exhibit A.

Q. Did you have the contract drawn up in final form?

A. The contract at that time had been drawn up in final form except for the numbers of each pledge ticket.

Q. Now, when the contract was completed, what, if anything, did you do with it?



(Testimony of Edward Dienstag.)

A. The contract was completed I believe on the afternoon of the next day, but I did nothing about it because I was in a trial in Long Beach at that time. The [710] following day, the 22nd, I went over to the Provident Loan Association, to the office of Mr. Kleinman and told him to sign the contract.

Q. How many contracts did he sign?

A. Two.

Q. Duplicate copies?

A. Yes. He signed them and I said, "Let's get hold of Sol and have him sign them." Sam said, "I don't know where he is, I haven't seen him this morning." I looked out of the door and saw Mr. Abe Zemansky. I said "Where is Sol?" and he said "Sol has been called up North." I said "Well, gee, that's a fine thing for him to do; here I have been breaking my neck to get this thing ready for him and he is gone." Abe said "Well, he was called in a great hurry, he just had to go up there." I said, "Well, then, Abe, I have got to get back to San Francisco and I will see him there when I get up up there." I left Los Angeles that evening.

Q. When you left, what, if anything, was done with the contracts?      A. I took them with me.

Q. Now, did you contact Mr. Zemansky in San Francisco?

A. The morning after I got to San Francisco, I called the St. Francis Hotel and asked whether Mr. Zemansky was registered there, I asked whether Mr. Zemansky was there, and they said

(Testimony of Edward Dienstag.)

he wasn't there but he had registered. I [711] said, "Well, then, will you be so kind as to have him phone me as soon as he comes in." I received a telephone call from Mr. Zemansky on the following morning, which would be February 24th. I said, "Sol, I have brought the contracts here with me because I was told you were here and I had to be here myself. I want you to come over to the office and sign the contract and the notes." Sol said, "I will come over, Ed, but I have got to go over to Oakland, to El Cerritos, this morning; what time in the afternoon will be all right?" I said, "Any time around two or three." Sol said "I will be there." Then that afternoon, sometime between two and three o'clock, Mr. Zemansky came in the office and I gave him the contracts to sign. He said "Are these the same ones I read," and I said yes, and he looked through them and signed both contracts. I then gave him the series of twenty notes of \$5,000 each to sign, which he did, and I believe he said, "Did Sam come up with you?" and I said "No, he didn't." I said "What brings you up here, Sol?" He said, "I had some business at El Cerritos." Prior to Mr. Zemanskys arrival in my office, I believe it was prior to his arrival, I had the notes, that is, the notes prior to these notes, photostated.

[712]

Mr. Wolver: Q. What was done with the copies of the contracts at that time, Mr. Dienstag?

A. I retained one and gave the other, which had

(Testimony of Edward Dienstag.)

Mr. Kleinman's signature on it, to Mr. Zemansky.

Q. Did you see Mr. Kleinman after that?

The Referee: When was it that Mr. Sol Zemansky signed the contract?

A. On February 24th.

Q. At what time of the day?

A. Oh, about two or three, as close as I can remember.

Q. Did he sign the notes at the same time?

A. Yes, your Honor.

The Referee: All right. Proceed.

Mr. Wolver: Q. Did you see Mr. Kleinman after that?

A. Mr. Kleinman arrived in San Francisco the following morning, February 25th.

Q. After that, did you have any other conversation with Mr. Zemansky?

A. Yes sir. [713]

Q. When was the next time you had any conversation with Mr. Zemansky?

A. I believe it was the evening of February 27th. I answered a ring on the telephone at my home.

Q. Can you tell us what occurred then?

A. Well, the operator said long distance is calling from Los Angeles. A voice came on the phone, which I recognized as Sol Zemansky's. I said, "Hello, Sol." He said, "Ed, is Sam there?" I said, "Yes, he is." He said, "May I speak to him?", and I said "Yes, Sol." I called Mr. Kleinman to the phone.



(Testimony of Edward Dienstag.)

Q. You didn't participate in that conversation?

A. I did not.

Q. After that, did you return to Los Angeles?

A. I returned to Los Angeles the following morning with Mr. Kleinman.

Q. How did you go?           A. By airplane.

Q. Do you recall approximately when you arrived in Los Angeles?

A. I believe that we arrived at five minutes to eleven; that is, in the morning.

Q. Did you have a conversation with any of the Zemanskys after that?           A. Yes.

Q. Will you tell us who was there, where it occurred, [714] and tell us the conversation?

A. I went over directly to the Provident Loan Association with Mr. Kleinman, and went into Mr. Kleinman's office. About two or three minutes after we got there, Sol Zemansky came in. Sol said, "Hello, boys" to us, and we both I think said "Hello" to him, and Sam Kleinman said to Sol, "What is this matter, you want twenty-five or thirty thousand dollars?" Sol said, "Well, the Simon boys have placed an attachment on the premises and there is the Sheriff sitting out in the hall." Sam said, "What do you mean, why have they placed an attachment, what have you got to do with them?" Sol said, "We borrowed some money from them some time ago and all of a sudden they had the Sheriff out there." Sam said, "What do you want me for, what do you want me



(Testimony of Edward Dienstag.)

down here for?" Sol said, "Well, Sam, we want to raise some money to lift this attachment." Sam says, "Bring some jewelry over here; I can sell as much as you want me to, \$50,000, \$100,000, \$250,000, anything you bring over, and we will lift the attachment." Sol said, "No, Sam, we can't sell it fast that way, we can't get any price for it." He said, "I have a fine idea in my head." He said, "Ed, are you going to be here very long?" I said, "Well, I will be here at least a couple of days because I have some business here." He said, "Well, will you be around so I can reach you?" I said, "You can always get me at my [715] office." With that, I left.

Q. Did you have any other conversation with Mr. Zemansky during the day?

A. I don't think I had any more conversations that day.

Q. Will you tell us the next time you had a conversation with Mr. Zemansky?

A. On March 1st, that is, the following day I came up to the Provident Loan Association to see Sam. Sol came in later and said, "Ed, I am trying to get a meeting with Judge Pacht, who represents Mr. Simon and Mr. Lyman." He said, "Where can I get hold of you later on?" I said, "Well, I will drop in about five when you close to go home with Sam. If you want to get me any sooner try my office, although I don't think I will be there later this afternoon."

Q. Mr. Dienstag, do you recall when the Simons'

(Testimony of Edward Dienstag.)

contract was signed?           A. Which contract?

Q. The Simons' contract?

A. It was signed the evening of March 1st, I believe.

The Referee: One minute.

(A short interruption on other matters).

Mr. Wolver: When was this conversation that you have referred to in regard to signing the Simons' contract? [716]

A. As I recall it, it was the next day, in the afternoon. Sol asked me whether I would be back and said that he was trying to make an appointment with Judge Pacht.

Q. If you arrived, as you testified, on February 27th, the next day would be February 28th?

A. That is right. No, if I am not mistaken, we arrived here the morning of the 28th and the conversation took place there in the afternoon of the 28th. When I had come back, Mr. Sol Zemansky told me he was trying to make an appointment with Judge Pacht. I told him I would be back about five to go home with Sam. When I got back, he said that he had reached Judge Pacht. Sam Kleinman was there and myself and Sol Zemansky, and he said he had reached Judge Pacht; that is, Sol said that, and he had an appointment for 8:00 o'clock, I think it was, that evening with Judge Pacht and his clients, Mr. Lyman and Mr. Simon. He said to me, "Ed, will you come along?" I said, "What for, Sol." He said, "Well, I think that I can

(Testimony of Edward Dienstag.)

settle that matter by giving them pledges as security," and he said, "When we will get into that, you can explain that to Judge Pacht much better than I could." I said, "We will be glad to go along, Sol, if you want me to." He said, "Sam, do you want to go up, too" and Sam said, "All right." Sol then said, "Well, we might as well have dinner together," and he suggested some place on Main Street, a steak place, Oddfellows' Grotto or Goodfellows, [717] something like that.

Q. You mean the Goodfellows' Grotto on Main between Third and Fourth?

A. Yes. And we went up to Judge Pacht's office I think about 8:00 o'clock, we arrived in the anteroom. Mr. Lyman and Mr. Simon were waiting there and one of those gentlemen walked in the library and I assume told Judge Pacht we were there because he came out and all of us went into the library.

The Referee: What night was that?

A. That would be the evening of February 28th, as closely as I can remember it.

Mr. Wolver: Q. Was a conversation had there, Mr. Dienstag?

A. Yes, there was an extensive conversation.

Q. Give us the substance of that conversation?

A. I think Sol Zemansky commenced the conversation by stating, "Judge, we would like to get this attachment removed." Judge Pacht said, "That's easy, just pay the amount we sued for."



(Testimony of Edward Dienstag.)

Sol said, "We haven't enough ready cash for that, as you already know, and we came to see whether we can arrange to take care of it some other way." Judge Pacht said, "Well, what do you propose to do?" Sol said, "Well, we could secure your money for you or part of it." Judge Pacht said "How?" and Sol said, "Well, we could give you our pledges as security for fifty per [718] cent of the money we owe you," and Judge Pacht said, "What do you mean?" Sol said, "Well, Mr. Dienstag here is Sam Kleinman's son-in-law, you know Sam Kleinman. His son-in-law is an attorney and he could explain it to you." Judge Pacht said, "Well, Mr. Dienstag, what is it?" and I said, "Well, I can't give you the cases on the subject or the law because my notes on that are all in San Francisco where I did my research in the matter." But I said that the general theory behind that transaction is that a pawnbroker in my opinion can assign his pledge tickets, his right to receive the money from the customer, as security for sums which the pawnbroker has loans. Judge Pacht said, "Well, have you checked that thoroughly," and I said I believe that I have; and Judge Pacht said, "Just a moment, please." Then he and Mr. Lyman and Mr. Simon left the office for five or ten minutes. When they returned Judge Pacht said to Mr. Zemansky, "Assuming that can be done, Sol, before we go any further with this matter at all, there is one thing that I have to know." He said, "There is no use



(Testimony of Edward Dienstag.)

entering into any transaction here unless we know your financial condition." He said, "What I want to know is, are you at the present moment solvent or are you not?" Sol said, "I am absolutely one hundred per cent solvent; you don't have to worry about that. Our assets far exceed our liabilities." The Judge then said, "Well, that transaction would be all right, [719] but we want security for all of our money." Sol said, "Well, I think that fifty per cent ought to be enough." He said, "I will liquidate it fast. At any rate," he said, "when this has been liquidated we will give you more security for the balance." After some conversation to that effect, Judge Pacht and Mr. Lyman and Mr. Simon again left the room. When they returned the Judge said, "Sol, my clients will accept that proposition, but there is one other matter to be settled." He said, "That is the question of my fees for the bringing of this action and the preparation of this agreement." Mr. Zemansky, Judge Pacht, Mr. Simon and Mr. Lyman discussed that matter.

Q. When they finished discussing that matter, Mr. Dienstag, was any further conversation had?

A. Yes sir. Judge Pacht said to me, "As you can see, Mr. Dienstag, I am very busy in my library; I have got a case in the Federal Court, which I am preparing to try in the daytime and I am preparing my brief in the evening." He said, "I haven't got the time to go into the matter, the law on this subject or the form of contract." He

(Testimony of Edward Dienstag.)

said, "Will you be kind enough to come in here tomorrow morning and see Mr. Ross in this office and tell him what you know about this, go into the law with him and the form of the contract." I said, "I will be glad to do that provided it is early in the morning because I have rather a busy day tomorrow." I said, "I have to leave town [720] tomorrow night." So he made arrangements for me to meet Mr. Ross the next morning at 8:30 at Judge Pacht's office.

Q. Did that meeting take place? A. Yes.

Q. Was the contract drawn or dictated?

A. Yes, as I recall, after some conversation with Mr. Ross, he called in one of the secretaries and dictated certain provisions of the contract which I suggested, and as I recall, when I left there, Mr. Ross had decided on all of the provisions of the contract, and the only thing that he then needed was the numbers of the pledge tickets which would become part of the contract.

Q. Did you have any conversation with any of the Zemanskys about the necessity of those numbers, the need for those numbers?

A. After leaving Mr. Ross's office, about an hour after that, I went to the Provident Loan and saw Sol Zemansky. He said to me, "Did you meet Mr. Ross?" I said, "Yes, I have just come from there."

Q. Who was present, Mr. Dienstag?

A. I don't think anybody else was present besides—well, not at the beginning of the conversa-

(Testimony of Edward Dienstag.)

tion, but after that started Mr. Kleinman came over.

Q. Well, will you relate the conversation, if you can tell us, when Mr. Kleinman came in?

A. Just after I had told Mr. Zemansky I had just come [721] from Mr. Ross's office, Mr. Kleinman came over and Mr. Zemansky said to me, "When will the contract be ready?" I said, "It shouldn't take long to type it except for the pawn-ticket numbers, that is, the pledge ticket numbers." I said, "I will have to put them in." I said, "By the way, you select the pledges and get the numbers probably tomorrow afternoon." Mr. Zemansky said to me, "When are you going?" and I said, "I am leaving this evening; I have a reservation on the 6:00 o'clock train." He said, "Well, Ed, couldn't you stay over until this is all finished?" I said, "No, I can't, I must be in San Francisco tomorrow morning without fail." He said, "Can't we get this contract out sooner?" I said, "The only way to get it out soon is to get those numbers of the pledge tickets to Mr. Ross." Mr. Zemansky then turned to Sam and he said, "Sam, why couldn't we give him a drawer of your pledges and get those numbers so this can be completed while Eddie is here;" and Sam turned to me and he said, "Well, Ed, can we do that?" I said, "Yes, as long as we replace them with other pledges." Sol said, "Well, Sam, is that all right?" Sam said, "Ed is handling this; it is up to him." I said, "That will be all right, Sol, as



(Testimony of Edward Dienstag.)

long as you put the loan back, replace the pledges which you take." Sol then called Mr. Leo Kravitz and told him to take a drawer of those pledges and get the numbers off a drawer of Kleinman's, and get the numbers right over [722] to Mr. Ross, so that they could be put in the contract, and as soon as he had gotten the numbers over there to start selecting pledges to replace the pledges that were taken from the Kleinman drawer. And those numbers, I am not certain whether I took those numbers over to Mr. Ross or whether they were sent over there, but they got over there in a very short time, as soon as they were copied off the Kleinman tickets, that is, that box of pledges, and about 5:00 o'clock of that day Kravitz had finished selecting the new pledges for Kleinman and had given me the numbers, which I took over to my office here in Los Angeles and handed to Mr. Horn, I think it was, to have copies for me for the basis of a new contract.

Q. Referring to this conversation, do you recall anything additional in this conversation?

A. Evidently I departed from the conversation to carry out these pawn-ticket numbers, but there was undoubtedly more said.

Q. May we have the balance of it?

A. Sam had agreed to take this substitution of pledges, I said to Sol, "Of course, you know, Sol, we will have to make a record of the substitution of pledges somehow; I think the way to do would



(Testimony of Edward Dienstag.)

simply be to draw a new note for the amount of the pledges and a new contract, we can have that done right away." Sol said, "Well, Sam, we have collected some money for you already; do you have [723] to have that money or could we borrow it." He said, "We can use it to loan out for new pledges, business is pretty good." Sam turned to me and said, "Well, how about that, Ed?" I said, "Well, don't ask me, it's your money, whatever you want to do with it." I said, "If you loan them that money, we will just have to have security for it;" and while I was saying that Dave Zemansky came in and he said, "Well, Sam, if you have got any more money, we could use some fresh money, we could use quite a bit of money." He said, "We would like to borrow some" and Sam again turned to me and said, "Well, how about that, Ed?" I said, "I can't advise you about loaning the money; it is your money, you do with it as you want to, but if you are going to allow them to borrow money that they have been taking in and you are going to give them any new money, there is only one way that I see that the transaction can be handled." I said, "Any money that you give them must be loaned out on new pledges," and Sol said, "That is what we want it for; of course, it will be loaned out on new pledges." I said, "In addition to that, all of the pledges that come in the Provident will have to come to secure you"; so at that Dave said, "These pledges coming in, they are going to be your security." I said, "If

(Testimony of Edward Dienstag.)

your are going to give them money, you get all of the pledges coming to you.”

Mr. Chotiner: Was that in the presence of Sol [724] Zemansky?

A. And Dave Zemansky. Sol said, “Well, whichever way is the proper way to handle it, that will be all right.” I said, “That’s the only way I know.” Dave Zemansky said nothing. Sam then said, “All right, Sol, you can use the money that you have taken in.” I said, “In that event, I will include that in this new contract that we are drawing up.” Later on, while I was at the office in regard to this contract, I got a telephone call with regard to including another sum of money in this contract, a cash sum of money. I don’t recall the exact amount, but it was \$1200 and some odd dollars. The final contract that I drew up that day, which included the substitution of the pledges, the sums which had been collected up to that time, and this new money, was \$25,920, I believe. I think that sum is right.

Mr. Wolver: Q. Mr. Dienstag, will you tell us what [725] happened later that day in regard to the Simons’ contract?

A. It was about 5:00 o’clock when I went to call for Mr. Kleinman at the Provident Loan Association. Mr. Sol Zemansky was there and he said, “Are you leaving on that 6:00 o’clock train?” and I said “Yes, I plan to, Sol.” He said, “I would like you to stay; we will call up Mr. Ross and see how far he has gotten.” Mr. Zemansky called up Mr.

(Testimony of Edward Dienstag.)

Ross or I did, at his request, I don't recall which, and learned Mr. Ross was just completing the contract and the listing of those numbers, and asked Mr. Ross whether we could not complete that contract that evening. I think Mr. Ross said he didn't want to work that night, he would rather do it the next day. I explained to him that Sol wanted to sign it that night and that he wanted me to be here, so Ross agreed to come over later that evening. He said he wanted to check the numbers which he had been given against the pledges and the pawn-tickets, that is, before signing the contract. Then I think Mr. Zemansky said something to him about getting rid of the Sheriff and Mr. Ross said he had orders to do that only when the contract had been signed. Arrangements were made for Mr. Ross to come over to the Provident Loan after dinner that evening, and I canceled my reservation on the 6:00 o'clock train and changed to the 9:00 o'clock. Ross came over; Mr. Lyman and Mr. Simon came over. Some time that evening Mr. Abe Zemansky and Mr. Dave [726] Zemansky were there; Mr. Sol Zemansky was there, I was there and Mr. Kleinman was there.

Q. Was it finished that evening?

A. Well, we started checking those numbers, that is, the numbers on those little pledge envelopes and the numbers on the pawn-tickets with the numbers that Mr. Ross had on the contract, and about 8:00 o'clock or thereabouts when I was about ready



(Testimony of Edward Dienstag.)

to leave for my train, they had only gotten to a third or halfway through. Mr. Zemansky asked me to remain until that contract was signed. I said, "Well, I can't take any other train, I don't know what I will do," and I think he said, "Can't you take a plane?" I said I would call up and I got a reservation for the 11:00 o'clock plane, and then I continued with the comparing of those numbers, which was not completed before it was time to catch the bus at the Biltmore for the plane. I again changed my reservation to the 1:00 o'clock plane. Before 12:00 o'clock we had finished comparing the pledge tickets. I recall at one time or another they would open up one of the pledge envelopes, take out a piece of jewelry and see whether or not that piece of jewelry was the same as the item called for on the pledge ticket. On one occasion Mr. Simon came away from where they were selecting these things, and I think it was either Leo Kravitz or Sam Kleinman that he asked whether a ring which had been pledged for \$300, what the value was, and [727] one of those gentlemen told him it was worth at least a thousand dollars, and Mr. Simon said, "Gee whiz, they are doing a wonderful business around here; they loan you \$300, get three per cent on that, and get a thousand dollars to secure the money they loaned." That continued, as I say, until they finished shortly before twelve, at which time I went over to the Biltmore and got the bus for the plane.



(Testimony of Edward Dienstag.)

Q. Do you recall, Mr. Dienstag, if anything was done in regard to the contract of February 24th on this evening?

A. Yes, I remember I sent my copy to Los Angeles, and when I got to Los Angeles on the morning of the 28th I also brought the notes and Mr. Dave Zemansky and Mr. Abe Zemansky were there, so I asked them to sign them and they did, but Mr. Abe Zemansky said, "Well now, does that make us personally liable?" I said, "Of course it does." He said, "Well, do you mean my life insurance would go on this." I said, "That all depends; I don't know how much life insurance you have got; life insurance has a certain exemption under the laws of the State and also the Federal Government, and anything in excess, if it became necessary to sue on this, the balance would be subject to this contract." Then Mr. Abe and Dave Zemansky signed the contract and notes, and at that time I believe it was then I gave them the other notes.

[728]

Cross Examination

By Mr. Chotiner: [736]

Mr. Wolver: Q. Will you answer the question? A. What was it, please?

(Question read as follows: "Q. Now, from your experience as an attorney and from your knowledge of the services rendered, what in your opinion is the reasonable value of the services rendered by counsel for the claimant?").

A. \$15,000. [738]

## EUGENE L. WOLVER,

called as a witness on behalf of the claimant, having been first duly sworn, testified as follows: [740]

Q. Now, have you formed an estimate of the reasonable value of services rendered in this case?

A. I have. [742]

Q. Will you answer?

A. In my opinion the reasonable value is \$10,000. [744]

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## RALPH J. YATES,

recalled as a witness on behalf of the Claimant, having been previously sworn, testified as follows:

## Direct Examination [751]

Q. Are you acquainted with what constitutes a bookkeeping system? A. I am.

Q. What are the essentials of a bookkeeping system?

Mr. Chotiner: Objected to on the ground that it is immaterial.

The Referee: Overruled. [752]

A. To clearly reflect the operation of the business, that is, the receipts or revenue, the disbursements or expense or capital investment, books that would properly reflect a correct picture of the financial condition of the business, particularly the assets and the liabilities, the inventory of the assets, either at the beginning of the year or at the end

(Testimony of Ralph J. Yates.)

of the year, or a perpetual inventory from day to day or month to month. As a result of my examination of the books of the bankrupt, there was no record maintained of the assets or the liabilities, the operation expenses, the net worth and inventory of the assets, and no record of cash reconciliations, nor a record of bank account reconciliations. It was strictly a memorandum record. They would enter the amount of their deposits and the amount of pledges redeemed, amount of new pledges. For example, if I.O.U.'s were issued, there was no record of the I.O.U.'s, there was no record of the amount of cash in the drawer, there was no record of any reconciliation of the amount of cash in the bank. From the books and records of the bankrupt, the bankrupt could not, nor an auditor could not, determine whether or not the business was making money or losing money, and could not determine whether or not the assets were greater than the liabilities, could not determine whether or not they were solvent or insolvent without making an extensive audit and preparing a report of all operations to arrive [753] at a profit or loss for any given period.

Q. What is the meaning of the terms "in balance" or "in control" when applied to accounting?

A. In balance is, the assets should equal the liabilities plus any surplus or minus any deposits.



(Testimony of Ralph J. Yates.)

A balance sheet should reflect either the profit or the loss of the operation at any given period.

Q. In proper bookkeeping, may a balance sheet be obtained from the books from time to time?

A. In proper bookkeeping a balance sheet could be obtained from the books in a very short time.

Q. Could a balance sheet have been obtained from the books that were maintained by Zemansky Brothers?           A. No sir.

Q. What is the meaning of control?

A. By control, for example, we have here Sam Kleinman and other parties that were holding notes. If we had a control of the notes payable, we could take the individual accounts and add them up and they would be in control with the notes payable account. Without that control, in this same memorandum book or in any memorandum book, a sheet could be inserted or could be taken out that would not be in control because you have no control. Without the control you don't know from your books whether or not you owe yourself money or whether you owe more than your memorandum books show. [754]

Q. Have you computed at my request the amount of redemptions, pledges secured to Mr. Kleinman by pledge agreements that were redeemed over the period of February 24th until the filing of the petition in this matter?           A. I have.

Q. What is the amount of that?



(Testimony of Ralph J. Yates.)

A. The amount of \$44,915. [769]

Q. Mr. Yates, do you know the amount of money that was loaned out by the Zemansky Brothers or the Provident Loan Association between the 24th day of February, 1939, and the date of the filing of the petition in this case?

A. I do.

Q. How much is that?

A. \$55,120.37. [783]

#### Cross Examination

By Mr. Chotiner:

Q. When you say that \$55,120.37 was loaned out on new loans between February 24, 1939 and the date of the filing of the petition, are you able to determine the source of the money that was used for those new loans; yes or no?

A. No, not from the record of the bankrupt.

Mr. Chotiner: I have no further questions.

The Referee: Any other questions.

#### Redirect Examination

By Mr. Wolver:

Q. Have you made any search to determine the source of any of the money, Mr. Yates?

A. Yes, I examined the books of the bankrupt, and from the books of the bankrupt I am unable to determine the source of the money. [784]

## KYLE Z. GRAINGER,

called as a witness on behalf of the Trustee, having been first duly sworn, testified as follows:

The Referee: Your name is Kyle Z. Grainger?

The Witness: Yes.

## Direct Examination

Mr. Chotiner: Q. What is your business or occupation?

A. I am an attorney-at-law.

Q. How long have you practiced in the Federal Court of the Southern District?

A. Twenty-seven years.

Q. During that period of time, have you had any experience in bankruptcy matters?

A. A great deal.

Q. During what period of time has that experience extended?

A. During all of that time, twenty-seven years.

Q. During the twenty-seven years approximately, can you tell us how many bankruptcy matters you have handled, either as attorney for claimant or for the trustee? [786]

A. It would be many hundreds.

Q. Have you handled matters concerning secured claims in bankruptcy? A. Yes.

Q. And has that been a great number of them?

A. Yes.

Q. Now, Mr. Grainger, assuming that a creditor by the name of Sam Kleinman, had entered into a contract dated February 24, 1939, with Zemansky Brothers, who were later adjudged bankrupts, in-

(Testimony of Kyle Z. Grainger.)

volving a \$100,000 obligation, and which contract provided for certain security to be given to the creditor, and assuming further that subsequent to February 24, 1939 that other contracts were executed by and between the parties covering the same subject matter, and which contracts took the place of part of the obligation contained within the \$100,000, excepting that it increased the sum to, say, \$108,000 instead of the \$100,000, and assuming that Zemansky Brothers were subsequently adjudged bankrupts, and assuming further that the Trustee in Bankruptcy filed an objection to the claim of Mr. Kleinman contending in part that the claim of Sam Kleinman was unsecured, and that the security allegedly given to him was invalid, and further assuming that the Trustee further claimed that there were offsets to the claim of Sam Kleinman on account of certain alleged usury, and assuming further that the attorneys for the claimant performed [787] services as testified to by them, and which testimony will now be read to you by the reporter, what in your opinion is the reasonable value of the services so rendered by the attorneys for the claimant? Now, will the reporter read the testimony of Mr. Dienstag and Mr. Wolver pertaining to the services rendered by them in connection with this matter?

Mr. Miller: We object to that question on the ground that it does not include all the elements

(Testimony of Kyle Z. Grainger.)

of services. The question does not set forth the amount of time that has been spent in the matter.

Mr. Dienstag: It does not state the amount of the claim filed by the claimant against the bankrupt estate.

Mr. Chotiner: Q. And assuming further, Mr. Grainger, that the amount of the claim is approximately \$127,000, and assuming further that there is ample security as claimed by the claimant to fully pay the entire security if allowed by the Court.

Mr. Dienstag: And the amount of the offset which you claim.

Mr. Chotiner: Q. And further assuming that the Trustee is claiming offsets in the sum of approximately—and assuming further that the offsets as claimed by the Trustee, if the Trustee is successful, would reduce the claim to a general claim in the amount of approximately \$59,000, and assuming further that one of the grounds of [788] the objections of the Trustee is that certain preferences were guaranteed, in favor of Sam Kleinman——

Mr. Wolver: I believe twenty-two were alleged.

The Referee: While counsel is looking that up, we have another matter.

(A short interruption on another matter.)



(Testimony of Kyle Z. Grainger.)

Mr. Chotiner: Q. Assuming further that the preferences alleged by the Trustee amount to approximately twenty in number, and total approximately \$50,000, what in your opinion is the reasonable value of the services rendered by the attorneys for the claimant?

The Referee: Is there further objection?

Mr. Wolver: May we reserve our right to object until after the reporter has finished the question.

The Referee: If you have any objection now, let's have it.

Mr. Wolver: We would like to have included that the usury question pertains to treble damages both before and after the change of the Usury Act.

The Referee: I think you should state the objection is made on the ground of usury; for instance, it starts with a certain time and continues up to a certain time, and that treble damages are claimed in a certain amount.

Mr. Chotiner: Q. And assuming further, Mr. Grainger, that the contention of the Trustee is that usury was [789] obtained to the claimant beginning with 1935 up to and including the date of the filing of the petition, July 10th, 1939; that in the contention of the Trustee as to usury the Trustee contends that the total usurious payments amounted to approximately \$27,000, and that in addition thereto the Trustee seeks to offset the claim by an addi-

(Testimony of Kyle Z. Grainger.)

tional sum of \$15,000, and by virtue of his contention that he is entitled to offset treble damages for usury paid during one year prior to the filing of the petition.

Mr. Wolver: May there be added to that that the claimant denies the existence of usury as a matter of fact and law, denies the existence of any preference as a matter of fact and law, and asserts the validity of his claim.

Mr. Chotiner: Q. Assuming further that the claimant objects to every objection and every contention that the Trustee has raised in this matter.

Mr. Wolver: With the exception of \$100.

The Referee: Anything else you think of? Now, what is it you want the reporter to read?

Mr. Chotiner: I would like to have him read the testimony of Mr. Dienstag and Mr. Wolver covering the services they testified to they rendered in the matter.

The Referee: Together with the cross examination, if any.

Mr. Dienstag: I think there should be added that the fees which we are asking for include the fees for four [790] attorneys and gives it as the attorneys for the claimant.

The Referee: Let's incorporate that in the question.

Mr. Chotiner: So incorporated.

The Referee: Don't read any testimony given by any person as to the value of those services.

(Testimony of Kyle Z. Grainger.)

(Whereupon the testimony of Mr. Dienstag and Mr. Wolver was read).

Mr. Chotiner: Do you have the question in mind now?      A. I think so.

Q. Will you tell us what in your opinion is the reasonable value of the services rendered by the attorneys for the claimant? What is your opinion?

A. In my opinion, I will place the value of the services at \$8,000.

[Endorsed]: Filed Aug. 12, 1942. [791]

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[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF EXCERPTS  
FROM PROCEEDINGS ON HEARING  
ARGUMENT ON CERTIFICATE ON PETITION OF SAM KLEINMAN FOR REVIEW OF REFEREE'S ORDER OF JANUARY 17, 1941.

Appearances:

ISAAC PACT, Esq.,  
THEODORE HORN, Esq.,  
LOUIS MILLER, Esq.,  
EUGENE WOLVER, Esq., and  
EDWARD B. DIENSTAG, Esq.

For Petitioner.

MURRAY CHOTINER, Esq., and  
FRANK WELLER, Esq.

For Trustee. [796]

Los Angeles, California,

Friday, July 18, 1941, 10:00 A. M.

The Court: Gentlemen, there is quite a voluminous record here and I thought that I might inquire whether the outline I am about to state epitomizes the legal picture as it is presented on this review.

An order should be entered that the reporter attend this hearing.

The case of *In re Abraham Zemansky et al.*, is a bankruptcy proceeding which originally was begun under Chapter XI on July 10, 1939. Subsequently an order of adjudication in bankruptcy was entered. Among the claims filed against the bankrupt estate was one filed by Sam Kleinman covering the following items: \$126,421.61 as a secured claim; \$350 as an unsecured claim; and an additional claim of \$750 unsecured, but for which priority was asserted as a labor claim.

The trustee filed objections against the first item, contending that at most it was an unsecured claim. He also objected to the so-called labor claim as having any priority, \* \* \*.

Following an extended hearing before the referee, the [797] latter has made his findings and conclusions to the effect that Mr. Kleinman be allowed a general unsecured claim in the amount of \$109,643.69, \* \* \*, and there is a further item of \$100 which the referee found that the claimant owed to the bankrupts, making a total unsecured claim as



allowed by the referee in the amount of \$85,222.68. In addition, the referee allowed the priority labor claim in the sum of \$75.81.

Perhaps I ought to interrupt here to inquire whether up to this point we are substantially in accord.

Mr. Pacht: I think we are.

Mr. Chotiner: I believe that is correct, your Honor.

The Court: The next statement I am about to make appears to me to be an outline of the facts to the extent that they are substantially without controversy.

For a number of years the bankrupts were engaged in the business of pawn broking. For a period of time they had a place of business on Main Street in this city known as State Loan Office. Subsequently, they established an additional place of business on Hill Street known as Provident Loan Association. Mr. Kleinman began lending money to the bankrupts either in 1925 or 1927. I don't think it is of any moment which year is correct. These loans were made at the rate of 12 per cent interest per [798] annum, and until the making of the agreement to be hereafter noted, these loans were unsecured. Likewise, all loans made by Mr. Kleinman prior to 1933 apparently had been repaid prior to that year. And in the latter year Kleinman resumed lending money to the bankrupts. Prior to November 6, 1934, the

date of the so-called 10 per cent usury constitutional amendment adopted in this state, he had advanced to the bankrupts sums totaling \$30,500. These were evidenced by promissory notes executed by the bankrupts and bearing interest at the rate of 12 per cent per annum.

In 1935 in consideration of loans made by Kleinman to the bankrupts, they executed and delivered to him four notes aggregating \$19,500.

In that same year the establishment conducted under the name of Provident Loan Association was opened on Hill near Seventh. About that time Kleinman entered the employ of the bankrupts at that location. While there appears to be a dispute as to the complete nature of his duties, he apparently did work for the bankrupts, performing one task or another, and he was given space in that establishment. In 1936 the total amount owing by the bankrupts to Kleinman aggregated \$50,000. About July 1st of that year notes evidencing this indebtedness were canceled and new notes, ten in number, were executed and delivered by the bankrupts to Kleinman, each in the principal sum of \$5,000, and bearing [799] interest at 12 per cent per annum.

In November of that same year the bankrupts borrowed an additional sum of \$20,000 from Kleinman. This was also evidenced by a note or notes bearing interest at 12 per cent per annum. In 1938 the bankrupts borrowed from Kleinman an addi-

tional \$25,700 evidenced by four notes which bore interest at 7 per cent per annum.

Up to February, 1939, no security had been given on any of this indebtedness. Under date of February 24, 1939, Kleinman and the bankrupts entered into a certain written agreement which is one of the exhibits forming a part of the record on this review, and it is this agreement and the acts of the parties following its execution which on the one hand claimant asserts supports his contention that his claim in the item of some \$100,000 is secured, and which, on the other hand, the trustee asserts supports the referee's findings to the effect that such claim was not secured.

Up to this point are we also in accord?

Mr. Pacht: Yes; we are, except that your Honor has omitted to mention—you may have it in mind—that between 1934 and February 24, 1939, Kleinman loaned to the Zemansky brothers on I.O.U.'s sums varying in amount from \$100 to \$15,000 from time to time, no interest being specified in the I.O.U.'s, and that some of these I.O.U.'s were repaid in cash while others were replaced by notes which in turn were [800] all consolidated on February 24, 1939, and went to make up the total sum of \$100,000 at that time.

The Court: I take it that there is no controversy about that statement.

Mr. Chotiner: There is no controversy, your Honor, except as to any conclusion that might be



drawn as to the fact that no interest was specified in the I.O.U.'s. In other words, if Judge Pacht meant by that that a piece of paper, the I.O.U. didn't have any writing on it regarding usury, I accept that statement as to the subject of interest.

Mr. Pacht: That is right.

The Court: Now, turning to this agreement, in substance it provided that the parties were desirous of securing the indebtedness owing to Kleinman, and accordingly the bankrupts agreed to transfer certain pledge agreements and pawn tickets, more particularly enumerated in an instrument marked Exhibit A attached to the contract. By that agreement the bankrupts purported to transfer these pledge agreements and pawn tickets to Kleinman, and in addition, Kleinman appointed the bankrupts as his agents to collect the sums owing on the pawn tickets. Bankrupts obligated themselves to collect such sums and hold the same in trust for the payment of the notes evidencing the indebtedness owing to Kleinman. In addition, the bankrupts agreed to retain all of the articles pledged under the pawn tickets and pledge agreements and to surrender them to customers [801] who had borrowed money thereon, only upon redemption according to law, and that any articles remaining after the expiration of the time limited for the redemption of the same were to be held by the bankrupts for the benefit of Kleinman. The notes evidencing such indebtedness, were 20 in number, each for the principal sum of \$5,000, and each bore interest at 10 per cent.



At the same time that this agreement was executed, the articles covered by the pawn tickets and pledge agreements were assembled and put in containers separate from other articles which had been pawned with the bankrupts and which were not involved in this agreement, and those containers were placed in a vault belonging to the bankrupts. The containers were marked with the letter "K" for the purpose of designating the same as being the articles covered by the pawn tickets and pledge agreements referred to in the agreement. At the same time a duplicate, or, rather, duplicate ledgers were prepared setting forth the accounts represented by these pawn tickets and pledge agreements, and in these ledgers entries were made from time to time as customers made payments on the pledges and pledge agreements.

Up to March 1, 1939, the bankrupts kept separate and segregated moneys collected by them on pawn tickets and pledge agreements covered by this contract, and entries were made crediting the amounts thus collected against the [802] indebtedness owing by the bankrupts to Kleinman.

About that date a change appears to have taken place in the dealings between the parties, at least to this extent: Orally, bankrupts were advised by Kleinman that they might use the moneys collected on these pawn tickets and pledge agreements for the purpose of making further loans to their customers, and that instead of reducing the indebted-

ness owing to Kleinman through the application of the moneys thus collected, they would be allowed to, in effect, exchange redeemed pawn tickets and pledge agreements for new pawn tickets and new pledge agreements obtained from the customers to whom these new loans would be made; and so from time to time subsequent to March 1, 1939, additional notes were executed by the bankrupts in favor of Kleinman. These notes vary in amount from \$1500 to \$4,600. The total amount thus collected from and after March 1, 1939, and reloaned by the bankrupts for which these additional notes were given amounted to \$39,130. I think I should make this correction: That from time to time as these pawn tickets were redeemed—referring now to pawn tickets listed in the exhibit attached to the contract of February 24, 1939—they were replaced by other pawn tickets. Endorsement was made on some of these notes which had been executed simultaneously with this contract, the endorsements being for amounts which were equal to the new notes. However, I am not clear about one item. Isn't it also [803] true that in addition to such endorsements there was an increase in the indebtedness owing from the bankrupts to Kleinman in the amount of \$8,350?

Mr. Pacht: That is correct.

Mr. Chotiner: That is correct.

Mr. Pacht: Those loans were made between May 2, 1939, and July 10, 1939.

The Court: Up to this point are we substantially in accord?

Mr. Chotiner: No; this is one time that we must take exception, if the court please, as to the points related by the court. There is a dispute as to the testimony that up to March 1, 1939, the bankrupts kept the money separate that was received as a result of redemption of loans from customers, and that the amount of that separate account equaled \$39,130, it being our contention that all of the money that came in from the transactions started after the February 24, 1939, contract and that all of the money collected went in the cash drawer without any segregation of the money. And there is also a dispute as to the points stated by the court that after March 1, 1939, about that date, that Mr. Kleinman told the bankrupts orally that they could use the money to make new loans, and that a system would be worked out whereby they would exchange the pawn tickets which had been redeemed for subsequent pawn tickets that would be received in the course of their [804] business, it being our contention that from February 24, 1939, that whenever redemption of pawn tickets was made that that money went directly into the cash drawer and was used generally in the business of the concern there.

The Court: At any rate, with those two exceptions may I inquire whether you are in accord?

Mr. Chotiner: Other than those two points, I



believe that the trustee's position is that we are in accord with what your Honor has stated.

Mr. Pacht: We think that the court has correctly stated the facts in every particular.

The Court: May I put it this way: You agree that there is an issue on the two exceptions noted by counsel?

Mr. Pacht: I didn't know until a few minutes ago, but I realize there is one now, your Honor.

Mr. Chotiner: There is no doubt in our mind that there is an issue on those two points.

Mr. Miller: May I inquire as to whether there was an agreement? Do you admit that the parties had such an agreement?

Mr. Chotiner: No. We do not admit that such an agreement was actually in existence by and between the two parties. A certain conduct by the parties is admitted, but we deny that the contract, that is, referring to the oral contract of March 1, 1939, was actually in existence as a contract. [805]

The Court: Do you agree that additional notes and agreements purporting or attempting to accomplish these additional pledges for the purpose of securing those additional notes were entered into between the parties subsequent to March 1, 1939?

Mr. Chotiner: Yes; we agree as to that, your Honor.

[Endorsed]: Filed Feb. 9, 1942. [806]



[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF EXCERPTS  
FROM PROCEEDINGS ON ARGUMENT  
ON PETITION OF SAM KLEINMAN FOR  
REVIEW OF REFEREE'S ORDER OF  
JANUARY 17, 1941.

Appearances:

ISAAC PACT, Esq.,  
THEODORE A. HORN, Esq.,  
EUGENE L. WOLVER, Esq., and  
LOUIS MILLER, Esq.

For Petitioner.

FRANK J. WELLER, Esq., and  
MURRAY M. CHOTINER, Esq.

For Trustee. [808]

Los Angeles, California

Monday, July 21, 1941

The Court: Am I correct in understanding that counsel for the claimant has not challenged counsel for the trustee to give us the precise references to the reporter's transcript respecting the evidence to which he referred?

Mr. Pacht: Well, we do not agree with the statement of counsel as to several matters; for instance, the statement of Yates' testimony is not, in our view, correctly stated. There are quite a number of matters to which he had adverted where he has made no statement that the transcript brings out or

substantiates the statement that counsel has made. It has been more in the nature of argument than a recital of facts.

The Court: Well, right there, let me ask this: Is there any evidence to the effect that notice of the alleged assignment was sent to the customers?

Mr. Pacht: No.

The Court: Is there some evidence supporting the assertion that the same method of collecting from the customers was continued by the bankrupts after the contract of February 24, 1939, was executed?

Mr. Pacht: Well, that is a mixed statement of fact and law. The customers still came to the Zemansky place of business to make their payments on their loans, but when the payments were made notation of the fact was made in the [809] case of a pawn, a pledge that had been assigned to Kleinman, in his separate books and records.

The Court: That, I understand, is admitted, but is there any other evidence to indicate any change in the method of collection?

Mr. Pacht: I don't think so.

The Court: Now, with respect to Kleinman's right to make collections.

Mr. Pacht: I think he had an absolute right to make collections. There is nothing in the contract that barred him from doing so.

The Court: In other words, the contract is silent, but your position is that, as a matter of law, he could step in, if he chose?

Mr. Pacht: That is right, if both parties found it more convenient to do it the other way.

The Court: And as far as the outside world was concerned, no one recognized any change?

Mr. Pacht: That is right.

The Court: So far as the keeping of the books and records respecting these pledges and the redemption thereof, other than the additional bookkeeping, by keeping a duplicate set for Kleinman, was there any change?

Mr. Pacht: Yes. There were daily slips given to Kleinman of collections that had been made on his pledges.

The Court: Now, does that summarize the evidence as [810] to the change in the bookkeeping methods, namely, that the bookkeeper compiled a duplicate set of records, a duplicate of what had been the customary method?

Mr. Pacht: Yes. And Kleinman himself kept a record, and there was a duplicate ledger set up, and Kleinman himself kept a record of the redemptions that were made.

Mr. Chotiner: Based on the slips that Zemansky brothers had given him.

Mr. Pacht: That is right.

The Court: Is there a conflict in the evidence as to how the moneys received from redemptions were kept in the cash drawer?

Mr. Pacht: The physical fact was that the money received from redemptions was placed in the cash drawer, but we claim upon the distinct under-

standing, lived up to by the Zemansky brothers, that that money was to be used for the sole purpose of reloaning and repledging.

The Court: Do you concede that cash that came in on the pledges that had been assigned to Kleinman was commingled with cash that came in on other pledges?

Mr. Pacht: Yes.

The Court: Now, was there any provision in this contract of February 24, 1939, which authorized Kleinman to terminate the bankrupt's power of collection?

Mr. Pacht: I do not recall. I don't think there is any specific provision to that effect. But we contend that, [811] as a matter of law, a power given, unless it is coupled with an interest, or unless there is an express provision to the contrary, may be terminated at any time. There was no such provision in the contract.

The Court: Then is there evidence to the effect that no payments were made to Kleinman out of moneys collected on account of the redemptions?

Mr. Pacht: In cash, payments of cash to him from redemptions?

The Court: Well, let us first answer that question.

Mr. Pacht: No.

The Court: But you think payments were made——

Mr. Pacht: Except in one instance. I think there is testimony to the effect that there was \$2400



of interest paid to him in cash. That represents the contract of July 5th. And he in turn reloaned it to the Zemanskys on the security of new pledges.

The Court: But there is a conflict even as to that?

Mr. Pacht: I don't know of any conflict as to that.

Mr. Chotiner: There is testimony of Dave Zemansky to the effect that he didn't have 24 \$100 bills, and he did not give them to Mr. Kleinman, and did not receive them back from Mr. Kleinman in the afternoon or any other time. I believe that is the testimony of Mr. Dave Zemansky.

Mr. Pacht: If there is any question about it, I will refer to page and line of the transcript. [812]

The Court: Now, then, you say that there is evidence, however, of payments to Kleinman, not through the medium of cash, but through some other form?

Mr. Pacht: Well, in this way: When redemptions were made they were reloaned by Zemansky brothers pursuant to this understanding, and then they had this bookkeeping transaction that counsel has adverted to, that I expect to dwell on in my closing argument, if I may, but I can do so at this time.

The Court: I don't want to go into it at length. I really want to clarify in my own mind your respective positions. Would this be a correct statement of the position taken on behalf of Kleinman,

now, that from time to time payments to Kleinman on account of redeemed pledges were credited on some of these notes, and in turn new notes executed to evidence the fact that on the one hand payments had been made on account of the old notes, but new loans made, as evidenced by the new notes?

Mr. Pacht: That is right.

Mr. Chotiner: I believe that is substantially correct.

The Court: I take it that the trustee probably will insist that there was that form of payment made. Otherwise you would be in the dilemma of having to pay both the old notes and the new notes.

Mr. Chotiner: We do not want to find ourselves in a dilemma. We plan to place the claimant in one. [813]

The Court: Now, is it conceded that the combination to the vault was never given to Kleinman?

Mr. Pacht: To the outside door. But I want to call the court's attention to this: There was a grill gate, and after you opened the main door to the vault, to which Mr. Kleinman did not have access, after that was opened there was still another grilled door to which he did have a key.

The Court: Alone?

Mr. Pacht: Yes.

The Court: Exclusively?

Mr. Pacht: Not exclusively.

Mr. Chotiner: That was a key kept for all employees, so they might have access to all the drawers,

but I believe it is a true statement that he couldn't get through the grill door without first having the combination to the vault. Is that right?

Mr. Pacht: That is right.

The Court: Let me see if I follow you in this statement: That portion of the vault to which Mr. Kleinman was given access, was that set aside exclusively for his pledges, or were there other articles in there, pledges and so on, to which the Zemansky brothers and their employes had access?

Mr. Pacht: The only property, so far as this case is concerned, that was in the vault, was the pawns themselves, the pawn tickets. The evidences of the pawns were not in [814] the vault at all.

Mr. Chotiner: Am I correct, Judge Pacht, when I say that all pawns that were there were the pawns of Simons and Gans and others?

Mr. Pacht: That is right. They were all there, and were segregated in the vault, those given to Kleinman, those given to Gans, those given to Simons, and those held by the bankrupts themselves. They were segregated and placed in different parts of the vault.

Mr. Chotiner: Once you got past the grilled door you had access to all of those?

Mr. Pacht: That is right. But none of the pawn tickets or the record of their assignment were in the vault. That is correct, isn't it?

Mr. Chotiner: I don't know what the testimony discloses as to where they were kept at night.



The Court: Was there any change in the method of redemption of pledges as maintained by the bankrupts after the execution of this contract of February 24, 1939, as compared with the method prior thereto?

Mr. Pacht: Except that the numbering was broken up, that is, there were different numbers assigned to the various pledges held by Kleinman. There was a different record of them kept.

Mr. Chotiner: I believe the testimony shows that after the Kleinman security was given, they simply ordered [815] a duplicate stub, and that they went then into a new serial number, 50,000, but they didn't keep a special set of serial numbers for Kleinman than others, but they went to a new serial number in point of time. Is that correct?

Mr. Pacht: That is my understanding. When you speak of the same method of redemption of pledges, I take it that you simply mean by that that the borrower would come in to Zemanskys and put down his money on the counter, and somebody there would go into the vault and find the pawn, and give it back to him? Isn't that what you mean?

Mr. Chotiner: Substantially that is it.

The Court: On the other hand, you could readily distinguish the so-called Kleinman pawned articles from all the others?

Mr. Chotiner: No, not unless you first went to the binder which contained the stubs of pawn tickets, and they were numbered numerically, and by looking in first one and then another, if it



wasn't there, then you would go to where the Kleinman numbers were, to find if it was there. That was the way they determined whether it was a so-called Kleinman pledge or one that Zemansky brothers had assigned to somebody else. You would have no way of knowing whether that was a Kleinman pledge or not. You would have to go to the binder and see which book it was in, for the purpose of finding out if it was a so-called Kleinman pledge.

The Court: Now then, was there a conflict in the [816] evidence as to whether or not the method of placing pledges in shoe boxes had prevailed prior to the Kleinman transaction?

Mr. Pacht: I will let Mr. Horn answer that, your Honor. He is a good deal more familiar with the actual procedure than I am.

Mr. Horn: With regard to that, there was testimony by Mr. Kleinman that after the security transaction one of the other employes, Mr. Kravitz, from time to time indicated these shoe boxes as containing new loans and referred to them as being Kleinman's loans, and asked Kleinman to get them. Mr. Dave Zemansky did testify that even before the security transaction pawns were being kept in shoe boxes, but the testimony we refer to in connection with the shoe boxes was that after the security transaction, when the pawns were put in shoe boxes as they came in, that the loan clerk, Kravitz, indicated to Kleinman that when those shoe boxes with his pawns in had accumulated an amount of

several thousand dollars worth, a contract would be drawn up as to those. Although there is a conflict in one sense, that they did keep them in shoe boxes before, there is no conflict with regard to the fact that after the security transaction the pawns were set aside in these shoe boxes by Kravitz and accumulated for Kleinman.

Mr. Chotiner: He says accumulated for Kleinman. I don't believe there is testimony to that effect, our [817] contention being that the same method of using shoe boxes was in use before and after.

Mr. Horn: I can locate for the court the exact pages of the reporter's transcript covering that matter.

The Court: Well, if you will do so.

Mr. Chotiner: I can give your Honor our citations right at this point. Page 614, line 14, to page 615, line 15.

The Court: Mr. Reporter, will you repeat that?  
(Record read by the reporter.)

The Court: I take it we are agreed that the pawns were never transferred to Kleinman?

Mr. Pacht: That is right.

The Court: Now, other than what was incorporated by the language of the contract of February 24, 1939, are you agreed that the possession of the pawn tickets was never transferred?

Mr. Pacht: No. We definitely claim the record is otherwise. There was an actual physical transfer of the pawn tickets. I have the record on that.

The Court: First of all, we will ask counsel for the trustee to give us his references.

Mr. Chotiner: I will have to run through these pages of my notes to find that one, but I will get it very shortly. I have this one notation right here, that the stubs containing Kleinman pledges were kept in the same place as [818] other stubs, but in separate boxes. Reporter's transcript, page 306, lines 1 to 7. Then I will find others as I run through this.

The Court: Well, while counsel is searching for them, maybe you can give me the information a little later, and I will turn to the next item. Is it conceded that at least there was a conflict in the testimony respecting the point that Kleinman followed the same procedure as the bankrupts in handling redemptions of pledges?

Mr. Pacht: I think that is a fair statement, your Honor.

The Court: And did he follow the same procedure as the bankrupts in all matters pertaining to the pledges?

Mr. Pacht: I don't know what is meant by that.

The Court: Did his conduct differ from that of any other employe?

Mr. Pacht: As to the pledges?

The Court: As to the handling of the pledges as they were redeemed.

Mr. Pacht: In so far as the customer is concerned, there was no change whatever. As far as his rights were concerned, there was a definite variation.



The Court: That is, by the use of this duplicate ledger and the furnishing by the bankrupts of the slips?

Mr. Pacht: Yes.

The Court: Of the daily redemptions, to Kleinman? [819]

Mr. Pacht: Yes, and a recognition by the bankrupts that as to those pledges Kleinman had rights which they were recognizing.

The Court: That is, by virtue of the fact that they endorsed credits on the old notes and issued new notes?

Mr. Pacht: And also that they consulted him and told him whenever redemptions were made of his pledges and how much the redemption was, and in other instances asked his express permission to repledge some of his pawn tickets to other creditors.

The Court: Is there any evidence to the contrary?

Mr. Chotiner: The evidence shows that he did get permission to use the pledges for the Gans and Simons contracts.

The Court: To that extent he exercised dominion?

Mr. Chotiner: That is right.

The Court: Over certain pledges?

Mr. Chotiner: He gave his permission for the use of them.

Mr. Pacht: More than that, Mr. Chotiner. The Zemanskys asked his express permission, and he gave his permission, and made it physically possible for them to pledge those particular pawn tickets to Simons and Gans.



Mr. Chotiner: As I understand your statement, it includes a little argument, and I can't quite agree with it.

Mr. Pacht: Will you also stipulate with me that they [820] distinctly asked his permission?

Mr. Chotiner: I will if the testimony so shows, but he unquestionably gave his permission as far as the use in the Gans and Simons transactions. As I recall the testimony, there was some testimony about how they were going to do it, and there is some doubt in my own mind whether Kleinman volunteered that they could do it, but in any event they did use them.

The Court: In addition, would you agree, Mr. Chotiner, that from time to time slips of the redemptions, of the record of these redemptions, were furnished by the bankrupts to Kleinman, and in turn credits would be endorsed on some of the old notes, purporting to show that they had applied the moneys collected on those redemptions toward the payment of some of the notes, and, in turn, new notes were given from the bankrupts to Kleinman, to the extent of the moneys thus collected, as evidence of the bankrupts' recognition that those were moneys which they were borrowing anew from Kleinman?

Mr. Chotiner: We will concede that substantially that is what happened, although in point of time the notations of credits on the old notes were not simultaneously with the handling of the slips of the redemptions. And, further, we do not concede as a matter of law that the new notes were given to

indicate new moneys borrowed from Kleinman, because in reality they were not new moneys. With those [821] exceptions, we agree with your Honor's statement.

I have another citation on that question of where the pawn tickets stubs were kept. Page 305, line 14 to line 26.

The Court: Is there a conflict in the evidence as to whether or not the substitution of new pledges for old pledges as the latter were redeemed was done simultaneously?

Mr. Pacht: There is no conflict that it was done within two or three days, and sometimes as late as a week after the money came in from the redemptions.

Mr. Chotiner: That is substantially correct.

The Court: Now, when you say that Kleinman permitted the bankrupts to use the funds obtained from redemptions of pledges, do you mean that there is a conflict in the evidence as to whether or not that was done on the condition that the moneys thus obtained would be credited on old notes and new notes executed to evidence such use?

Mr. Chotiner: Yes, we do contend there is that conflict by virtue of the testimony of the witnesses to the effect that after the February 24, 1939, contract, that the money received from redemptions went into the cash drawer and was used again for the purpose of reloaning, and by virtue also of the contention and testimony of the claimant that it wasn't until March 1, 1939, that they entered into an oral agreement whereby this could be done.

The Court: Let me see if I follow you. Is it your [822] position that there is evidence to this effect, that between February 24th and February 28th inclusive, 1939, moneys were collected upon the redemption of pledges which had been assigned under the contract of February 24, 1939, and those moneys not only commingled with other moneys which had to do with such pledges, but that employes of the bankrupts forthwith, during those few days, used those moneys to loan to other customers, without consulting Mr. Kleinman about it?

Mr. Chotiner: Yes, your Honor.

Mr. Horn: I would like to have your reference to any page in the transcript where that appears. On that point, while Mr. Chotiner is looking for it, I would like to call the court's attention to the fact that Mr. Kleinman testified very definitely about the fact that Sol Zemansky told him he had this money for him, and wanted to re-borrow it. There was no rebuttal of that point whatsoever. Mr. Sol Zemansky, who was available, was not called to deny that he told Kleinman he had \$4,000 collected and he wanted to re-loan it. The only testimony on the point by Mr. Sol Zemansky occurred at page 208 of the transcript where, on cross examination, he was asked whether he didn't recall telling Mr. Kleinman that he wanted to borrow the money that was collected and Sol Zemansky said, "I don't recall." He didn't say, "No, we have already used it." He merely said, "I don't recall." I have other testimony of Mr. [823] Kleinman and Mr.



Dienstag on that point, and there was no rebuttal whatever. I would like to call the court's attention further to the fact that I am pretty sure the record shows that after the contract of February 24th was executed Mr. Kleinman went to San Francisco, and didn't come back until February 27th or March 1st.

Mr. Chotiner: Substantially that is the situation. The testimony was not directly limited as between February 24th and February 28th, but, rather, both before and after the security was given, was money put in the cash drawer and re-loaned. I think we are in agreement as to what the evidence is.

The Court: What days of the week fell during this period of February 24th to March 1st, 1939? I have here a calendar for the year 1939, which shows that February 24th fell on a Friday, which would mean that the 25th was on a Saturday, and the 26th was on a Sunday, and the 27th on Monday and the 28th on a Tuesday. Now, does the evidence show without contradiction that throughout that period, other than Sunday, that the bankrupts continued to do business?

Mr. Chotiner: Yes, that is right.

Mr. Pacht: Yes.

The Court: Is the evidence also without contradiction that on February 24, 1939, Kleinman left Los Angeles?

Mr. Chotiner: I think the testimony shows that on [824] February 27th he was in San Francisco. As to the date he left Los Angeles, frankly, I don't recall what the transcript does show. I know it shows that on the 27th he was in San Francisco,



and received a long distance telephone call from Sol Zemansky, telling him of the attachment.

Mr. Pacht: Do you recall any evidence on that point?

Mr. Horn: I don't believe there was any specific reference to the date that Mr. Kleinman left Los Angeles.

Mr. Miller: He left on the 25th.

Mr. Pacht: You mean that the record shows that he left on the 25th?

Mr. Miller: Yes.

The Court: Well, I will suggest that counsel at some later time ascertain the exact reference in the record about that. In other words, what I am seeking to ascertain is, does the record show here, or will it justify an inference that Kleinman was aware of the fact that the bankrupts were using the funds obtained from redemptions of pledges supposedly assigned to him in the same manner after the signing of the contract of February 24, 1939, as had been practiced prior to the making of that contract, or did the bankrupts, without his knowledge, violate the agreement and proceed to abuse their rights in the matter, or violate his rights.

Mr. Pacht: We think the record will bear out this fact, that the bankrupts recognized his right to a segrega- [825] tion of those moneys and were not utilizing them for their own purposes between the 24th of February and the 1st day of March, and that they had segregated some \$4,000.

Mr. Chotiner: Do you contend that there was an actual segregation between February 24th and March 1st?

Mr. Pacht: Yes.

Mr. Chotiner: We would inquire, through the court, for the citations in the transcript that show the actual segregation.

Mr. Pacht: Mr. Zemansky was supposed to do it and told Kleinman that he did do it.

Mr. Chotiner: Is there any testimony in the record which shows that they actually did physically segregate that money, or are you relying on the statement testified to by Mr. Kleinman that that is what Sol Zemansky told him he did.

Mr. Pacht: That is right. And there is no testimony to the contrary.

The Court: On the other hand, as I suggested a moment back, I would be interested to know whether Kleinman was aware of how the bankrupts were loaning the moneys collected on the redemption of the pledges following the signing of this contract.

Mr. Pacht: We will try to locate whatever testimony there may be in the record on that.

Mr. Chotiner: We will do likewise. [826]

The Court: In other words, if he was in the place of business it might justify an inference that he did know what was going on. Of course, if he left on the same day the contract was signed and didn't return until March 1st, that might put another aspect on the situation.

Mr. Pacht: The record discloses at page 524 of the transcript—is that Kleinman's testimony?

Mr. Horn: That is Kleinman's testimony.

The Court: 5 what?

Mr. Pacht: Page 524, commencing at line 22. It shows that he left for San Francisco the very same night that the contract of February 24th was signed. There is no question about it, that he was going there the same night that the contract was signed, which was on February 24th, and that he did not return until after the levy of the Simons attachment.

Mr. Chotiner: Except let me point out to the court that Mr. Kleinman left the same night that Mr. Kleinman testified that Abe Zemansky signed it. In the testimony at least there is a conflict. In any event the testimony shows that Sol Zemansky first signed the contract in San Francisco the same day or the day following his arrival at the Hotel St. Francis, and the date of his arrival at the Hotel St. Francis is fixed as February 22nd. There is testimony in the record to the effect that Abe Zemansky and Dave Zemansky signed the contract the same night that [827] the Simons people were at the Provident Loan Association, which was after the attachment was run, and the attachment was run on February 27th, so, therefore, if Mr. Kleinman is referring to the night that Abe Zemansky signed, he would have to be referring to a time subsequent to February 27th.



Mr. Miller: He was in San Francisco and received a telephone call.

Mr. Chotiner: I might suggest that during the noon recess, if I have an opportunity to run through the transcript more carefully, I may be able to find another citation that will help clear up the point.

Mr. Pacht: Mr. Wolver is calling my attention to another citation showing that he was in San Francisco during that time. We will try to find all the appropriate parts of the transcript dealing with this subject, but I think your Honor will find that immediately after the contract of February 24th was signed Kleinman left for San Francisco, and did not return until after the levying of the Simons attachment, which was done February 27th. He didn't return until the 28th.

Mr. Chotiner: And it is our contention that the date of his leaving Los Angeles is not definitely fixed by the testimony, because there are inconsistent references to points of time, but we will endeavor to find more specific citations.

The Court: All right. [828]

Mr. Chotiner: Point 16. Judge Pacht challenged the authority in the record, that we couldn't tell from what source the money came, which is point 16. We find that Mr. Yates was unable to determine from what source the money came for the making of the new loans from February 24, 1939, to the date of the filing of the petition, and that is contained in the reporter's transcript, page 784, lines 3 to 18.



Mr. Pacht: What Yates testified to was that he couldn't determine that from the records of the bankrupts, but from the testimony of the bankrupts it is determinable. In other words, they had no other money coming in, there was no other source of funds except Kleinman for the making of loans during that period.

Mr. Chotiner: You don't seriously contend that the Zemanskys were not receiving money, got no money from any source other than redemptions?

Mr. Pacht: I expect to demonstrate to the court that between February 24, 1939, and the date of bankruptcy, the only moneys that went out for loans were something like \$55,000, and that at least \$51,000 of that came from redemptions of pledges theretofore given to Kleinman, plus approximately \$8,000 new money supplied by Kleinman from other resources.

Mr. Chotiner: All of which money was commingled with whatever other funds the Zemanskys had.

Mr. Pacht: Yes. Well, the difference doesn't amount [829] to very much, and of the total amount of loans made by them during that intervening period about 96 per cent came from Kleinman's funds.

The Court: Well, as I understand it, when we resume Senator Weller will take up another point. My present thought is that there are certain portions of the reporter's notes that I would like to have transcribed. They include the following: The

statement made by the court at the outset of the argument. Then the colloquy that has taken place between the court and counsel this morning following the conclusion of Mr. Chotiner's argument.

Mr. Pacht: Concerning the time of Mr. Kleinman's arrival in San Francisco, I would like to call the court's attention to the testimony of Dienstag appearing on page 713, commencing with line 21, and the whole of page 714, which shows that Kleinman arrived in San Francisco on the morning of February 25th.

(Whereupon a recess was taken in this matter until 2:45 p.m., Monday, July 21, 1941.)

[Endorsed]: Filed Feb. 9, 1942. [830]

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[Title of District Court and Cause.]

PETITION OF SAM KLEINMAN FOR EXTENSION OF TIME TO DOCKET APPEAL

Comes now your Petitioner, Sam Kleinman, a claimant and appellant in the above entitled matter, and respectfully represents:

That he filed a Notice of Appeal herein on the 8th day of July, 1942; that pursuant to the rules of Court he filed his Designation of Contents of Record on Appeal; that on the 13th day of August, 1942, the Clerk of the United States District Court for the Southern District of California wrote to your petitioner's attorney, stating that certain of

the material designated as part of the contents on appeal could not be prepared within the forty days allowed for docketing of appeals, stating that it would be necessary to have an extension of time to docket the appeal; that your petitioner's attorney, Edward Dienstag, Esq., was on vacation and did not receive said letter until the 17th day of August, 1942; that the 17th day of August, 1942, is the last day for docketing said appeal; that your petitioner is informed and believes that fifteen days will be sufficient time to complete the material necessary for said appeal.

Wherefore, your petitioner prays that this Honorable Court make its order extending the time to docket the said appeal to and including Tuesday, the 1st day of September, 1942.

Dated: August 17, 1942.

SAM KLEINMAN.

[Endorsed]: Filed Aug. 18, 1942.

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[Title of District Court and Cause.]

### ORDER

Upon reading the petition of Sam Kleinman for an Order Extending Time to Docket Appeal, and good cause therefor appearing, it is hereby ordered that the time to docket the appeal in the above

entitled matter is hereby extended to and including Tuesday, the 1st day of September, 1942.

Dated: August 17, 1942.

FRANCIS A. GARRECHT,  
U. S. Circuit Judge.

[Endorsed]: Aug. 18, 1942.

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[Endorsed]: No. 10236. United States Circuit Court of Appeals for the Ninth Circuit. Sam Kleinman, Appellant, vs. Paul W. Sampsell, Trustee in Bankruptcy of the estate of Abraham Zemansky, David Zemansky and Sol Zemansky, doing business under the fictitious names and styles of Provident Loan Association and State Loan Office, Bankrupts, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed September 1, 1942.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.



In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10236

SAN KLEINMAN,

Appellant,

vs.

PAUL W. SAMPSELL, as Trustee of the Estate  
of ABRAHAM ZEMANSKY, DAVID ZE-  
MANSKY and SOL ZEMANSKY, doing busi-  
ness under the fictitious names and styles of  
PROVIDENT LOAN ASSOCIATION and  
STATE LOAN OFFICE,

Appellee.

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY

To: Paul P. O'Brien, Esq., Clerk of the above  
entitled Court; and to Paul W. Sampsell, and  
to Frank C. Weller, Esq., and to Murray M.  
Chotiner, Esq., his attorneys:

You, and Each of You, will please take notice  
that Sam Kleinman, the appellant in the above  
entitled appeal, intends to rely upon the following  
points:

(1) That portion of the Order of The Judge on  
Petition for Review of Referee's Order dated June

8, 1942, which adjudges and decrees that the claim of Sam Kleinman is a general unsecured claim and not a secured claim, is contrary to the law and is not supported by the evidence.

(2) That the District Court erred in making that portion of its Order, dated June 8, 1942, adopting and approving the following Findings of Fact of the Referee, for the reason that the same are against the law and not supported by the evidence:

(a) That on February 24, 1939, and for some time prior thereto, and continuously thereafter, Sam Kleinman had reasonable cause to believe, and did know, that the bankrupts, as co-partners, and as individuals, were insolvent.

(b) The pledge agreements, pledge property and pawn tickets remained in the possession and under the control of the bankrupts.

(c) That the money received from the customer would be placed in the cash drawer and used again in the business of the bankrupts, without segregating it in any manner.

(d) The moneys received as a result of the redemption of pledges by customers became a part of the general funds of the bankrupts, and that Sam Kleinman had full knowledge of this procedure and acquiesced to it.

(e) There never was a transfer of the pawn tickets or pledges, and that all of the property and assets at all times remained in the exclu-

sive possession and control of the bankrupts, and that Sam Kleinman did not exercise any dominion or control over the pledges or the pledge ticket stubs, except as an employee of the bankrupts.

(f) That the bankrupts at all times had exclusive dominion and control of the pledge ticket stubs and pledges, and that there was not any difference in the handling of the pledges or pledge tickets after they were assigned to Sam Kleinman for security than there was before that time.

(g) That the transfer of the pledges and pledge ticket stubs from the bankrupts to Sam Kleinman was a fiction, and that no actual transfer ever took place.

(h) That the transaction between the bankrupts and Sam Kleinman was an attempt to give Sam Kleinman a more favorable position over other creditors.

(i) That the checks executed by Sam Kleinman's daughter, Jeanette Dienstag, and delivered to the Bankrupts in respect to new notes and contracts, was a subterfuge, as the sums of money indicated were not actually paid to the bankrupts.

(j) That the claimant knew that in 1936 and 1937 there was sufficient money to make loans, and that after that time he knew there was not sufficient money to make all loans re-

quested by customers; and that he also knew that many large loans were refused because the bankrupts were short of capital.

(k) That a duplicate set of pawn ticket stubs were not segregated from the rest of the records of the bankrupts.

(3) That the District Court erred in approving and adopting the following Conclusion of Law of the Referee:

That the assignment of pledge tickets and pledges from the bankrupts to Sam Kleinman was void as against creditors of the bankrupts and as against the Trustee in bankruptcy.

(4) That the District Court erred in making its order adjudging and decreeing that the said claim of Sam Kleinman is a general unsecured claim (rather than a secured claim).

(5) That the District Court erred in failing to find that the claim of Sam Kleinman was a secured claim in the sum of \$108,350.00, plus interest accrued at the date of the proof of claim, i.e., the 14th day of February, 1940, together with interest at the rate of 10% from and after said 14th day of February, 1940.

(6) That the District Court erred in failing to find that the claimant was entitled to reasonable attorneys' fees in this matter by virtue of his security agreement.



Dated: Sept. 5, 1942.

EDWARD DIENSTAG, THEO-  
DORE A. HORN and LOUIS  
MILLER,

By EDWARD DIENSTAG,  
Attorney for Sam Kleinman,  
Claimant and Appellant.

Receipt of a Copy of the within Statement of  
Points is hereby admitted this .....day of  
....., 1942.

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Attorneys for Paul W. Samp-  
sell, Trustee in Bankruptcy  
and Appellee.

[Endorsed]: Filed Sep. 5, 1942.

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[Title of Circuit Court of Appeals and Cause.]

Upon reading the application of the appellant,  
Sam Kleinman, for an order eliminating from the  
printed record Kleinman's Exhibit No. 6, consist-  
ing of a ledger book containing certain numbers  
and dates, and considering said Exhibit in its origi-  
nal form, and good cause appearing therefor,

It Is Hereby Ordered that said Kleinman's Ex-  
hibit No. 6 be eliminated from the printed record

herein and that said Kleinman's Exhibit No. 6 be considered in its original form.

Dated: September 8th, 1942.

CURTIS D. WILBUR,

Senior United States Circuit  
Judge.

[Endorsed]: Filed Sep. 8, 1942.